ARTICLE ENTRIES ALPHABETIZED BY AUTHOR LAST NAME

Randall S. Abate & Todd A. Wright, *A Green Solution to Climate Change: The Hybrid Approach to Crediting Reductions in Tropical Deforestation*, 20 DUKE ENVTL. L. & POL'Y F. 87 (2010).
This article discusses the Kyoto Protocol, the current international agreement in place to address the growing issue of global warming and other environmental concerns. The author argues in addition to the agreements currently in place, addition financial incentives can be created to curb deforestation in developing countries. The article proposes a hybrid method for achieving this, combining aspects of the current international agreements with other financial incentives.
{60} ADR—GENERAL
{84} SUBJ MATTER: ENVIRONMENT
{92} SUBJ MATTER: INT'L

Daniel Abebe & Jonathan S. Masur, *International Agreements, Internal Heterogeneity, and Climate Change: The "Two Chinas" Problem*, 50 VA. J. INT'L L. 325 (2010).
This article discusses reasons why it is difficult to convince China to join a meaningful international climate agreement. Negotiations are more likely to stall as each side engages in hard bargaining. If the costs and benefits of a global climate agreement were entirely measurable in fuel costs, negotiations would at least be straightforward. Additionally, the economic and ethnic schism between Western China and Eastern China complicates matters.
{1} NEGOTIATION—GENERAL
{84} SUBJ MATTER: ENVIRONMENT
{92} SUBJ MATTER: INT'L

Dariusz Adamski, *Implementation and Administration of the Broadband Stimulus Act: Google, the Guilds, and the Reading Public: Settlement is Code is Law?*, 19 MEDIA L. & POL'Y 107 (2009).
The author discusses what is referred to as the Google Book Settlement. The author looks at how negotiating the Google Book Settlement can eliminate a large share of the enormous transaction costs plaguing the copyright system. However, the author looks at the process of negotiation from the libraries viewpoint and argues as third parties libraries should benefit from the Settlement and be free to press Google in direct negotiations to alter its position expressed in the Settlement.
{1} NEGOTIATION—GENERAL
{78} SUBJ MATTER: COMPUTER

{137} EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES
{147} POWER IMBALANCE

Mary Adkins, Moving Out of the 1990s: *An Argument for Updating Protocol on Divorce Mediation in Domestic Abuse Cases*, 22 YALE J.L. & FEMINISM 97 (2010).
This article argues legislation crafted in response to critiques of divorce mediation for domestic violence is outdated and should be reformed. This is because the legislation inaccurately reflects the nature of court mediation today and fails to respond to the full range of DV victim experiences, needs, and abilities. The procedures in place discourage and prohibit DV victims from the benefits of mediation and should, therefore, be reformed.
{21} MEDIATION—GENERAL
{85} SUBJ MATTER: FAMILY
{133} COURT REFORMS
{144} LEGISLATION

David C. Albalah & Jesse D. Steele, *For Business Dispute Solutions, Process Matters*, 11 CARDOZO J. CONFLICT RESOL. 385 (2010).
The authors feel the adversarial system in which all American business lawyers practice negatively influences mediation procedures across the country. This article discusses important procedural characteristics of mediation the authors feel are missing from all business mediations to the detriment of their clients. Some procedural methods mentioned include dealing directly with business leaders, addressing underlying business interests, and communicating effectively.
{21} MEDIATION—GENERAL
{81} SUBJ MATTER: CORPORATE
{136} ECONOMIC ADVANTAGES OF ADR

Chad Albert, Comment, *Racing to Settlement: The Applicability of Federal Rule of Evidence 408 to Nonparty Settlement Communications*, 158 U. PA. L. REV. 1199 (2010).
This comment looks at Federal Rule of Evidence 408 and how it impacts nonparty settlement communications. The article is largely a survey of how Rule 408 can operate when nonparties become involved in furtherance of a settlement; a situation the author argues is not envisioned by the Rule itself. Of note for the dispute resolution context is the author's discussion of Rule 408 and mediation in the Sixth Circuit.
{60}ADR—GENERAL
{87}SUBJ MATTER: GOV'T

{123}SETTLEMENT: PRESSURES TO SETTLE
{128}REQUIREMENTS: STATUTORY OR RULES
{137}EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES

Paula Church Albertson, *The Evolution of Labor Provisions in U.S. Free Trade Agreements: Lessons Learned and Remaining Questions Examining the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR)*, 21 STAN. L. & POL'Y REV. 493 (2010).
This article examines how through specific authorizing language, Congress was able to guide the negotiation of labor standards under CAFTA-DR. Because of the challenging nature of labor negotiations, the author argues such statutory language sets a minimum bar for what a free trade agreement should include regarding labor standards. It also includes a standardized framework for processing grievances, broken into (1) receipt and review, (2) consultations and council, and (3) dispute settlement.
{1} NEGOTIATION—GENERAL
{92} SUBJ MATTER: INT'L
{93} SUBJ MATTER: LABOR—GENERAL

Klint Alexander & Bryan J. Soukup, *Obama's First Trade War: The US-Mexico Cross-Border Trucking Dispute and the Implications of Strategic Cross-Sector Retaliation on U.S. Compliance Under NAFTA,* 28 BERKELEY J. INT'L L. 313 (2010).
This article examines Mexico's noncompliance approach to the U.S. in regard to NAFTA trucking regulations. The author analyzes the implications of a NAFTA arbitration decision claiming it aided in Mexico's decision to use cross-sector retaliation against the U.S. in the 2007 suspension of the Cross-Border Trucking Development Program.
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L
{93} SUBJ MATTER: LABOR—GENERAL
{124} COMPARISONS: CROSS-CULTURAL

Nadja Alexander & Michelle LeBaron, *Death of the Role-Play*, 31 HAMLINE J. PUB. L. & POL'Y 459 (2010).
This article argues role-plays are counterproductive in negotiation training and should not be used. The authors assert participants should consider new ideas and change beliefs and behaviors, and these results come from actual experiences, not staged scenarios. The article further posits experiential learning approaches are more beneficial than repeated role-playing, and role-playing should only be the starting point in negotiation training.

{1} NEGOTIATION—GENERAL
{83} SUBJ MATTER: EDUCATION
{155} TEACHING

Shahla F. Ali, *Barricades and Checkered Flags: An Empirical Examination of the Perceptions of Roadblocks and Facilitators of Settlement Among Arbitration Practitioners in East Asia and the West*, 19 PAC. RIM L. & POL'Y J. 243 (2010).
This article discusses international arbitration from a cross-cultural perspective, juxtaposing cultural perceptions of best practices for settlement proceedings between Western and East Asian cultures. Building from an empirical survey, the author notes convergence and divergence of perceptions for best practices in arbitration and argues effective arbitration in a cross-cultural context is heavily impacted by parties' awareness of how their cultural backgrounds color the proceedings.
{44}ARBITRATION—GENERAL
{92}SUBJ MATTER: INT'L
{124}COMPARISONS: CROSS-CULTURAL

Cynthia Alkon, *Plea Bargaining as a Legal Transplant: A Good Idea for Troubled Criminal Justice Systems?*, 19 TRANSNAT'L L. & CONTEMP. PROBS. 355 (2010).
The author discusses the role of plea-bargaining and abbreviated trials in criminal justice systems. The author calls for international organizations to monitor the plea bargaining proceedings to ensure nations are complying with human rights standards. The article discusses how plea-bargaining can be used to combat corruption and organized crime. If plea-bargaining accomplishes these goals, then public confidence in the plea-bargaining process will increase.
{1} NEGOTIATION—GENERAL
{82} SUBJ MATTER: CRIMINAL

Giyang An, Note, *Enhancing the Effectiveness of Mediation in Korean-American Family Disputes: Cultural Sensitivity Training for Mediators and Co-Mediation Teams*, 11 CARDOZO J. CONFLICT RESOL. 557 (2010).
Family disputes within Korean-American households are particularly difficult to mediate because of the antiquated gender roles that are part of the culture. This article proposes a cross-cultural, co-mediation model as the preferred method of handling these special cases. The model is presented after a discussion of the historical significance of gender roles and how those roles affect Korean immigrants living in this country.

{21} MEDIATION—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Joseph F. Anderson, Jr., *Where Have You Gone, Spot Mozingo? A Trial Judge's Lament Over the Demise of the Civil Jury Trial*, 2010 FED. CTS. L. REV 99 (2010).
Judge Joseph F. Anderson laments the decline in civil cases being tried to a verdict and attributes the reduction to complex court rules and an increasing reliance of alternative dispute resolution methods including mediation and arbitration clauses. Despite seeing mediation's merit, he specifically opposes mandatory mediation, believing it overly emphasizes the debating skills of attorneys and improperly masks the particular facts of a case.
{21} MEDIATION—GENERAL
{73} SUBJ MATTER: GENERAL
{123}SETTLEMENT: PRESSURES TO SETTLE
{127} REQUIREMENTS: MANDATE TO USE
{133} COURT REFORMS
{151} ROLE OF LAWYERS

Michelle J. Anderson, *Sex Education and Rape,* 17 MICH. J. GENDER & L. 83 (2010).
The author proposes the use of negotiation in the realm of sexual intercourse. The author argues students, in the area of sex education, need to be taught better communication and negotiation skills because the lack of formal education about verbal sexual negotiation leaves students dangerously ignorant. A subsection of the article goes into detail about how to negotiate sex verbally because the author proposes rape law should require negotiation before sexual penetration.
{1} NEGOTIATION—GENERAL
{83} SUBJ MATTER: EDUCATION
{155} TEACHING

Tiffany Ansley, Note, *Gentrification and Mediation: Where A Single Pronunciation and Differing Perceptions Converge*, 11 CARDOZO J. CONFLICT RESOL. 585 (2010).
Gentrification, or the process of higher-income residents displacing a low-income community, has very powerful emotional and legal consequences attached to it. The author proposes mediation is the only proper form of dispute resolution that can handle the phenomena effectively both prior to and after gentrification sets in. The pro-mediation article also gives examples

where the proposed method was successful as well as barriers to the implementation of the system.
{21} MEDIATION—GENERAL
{77} SUBJ MATTER: COMMUNITY

Joanna B. Apolinsky & Jeffrey A. Van Detta, *Rethinking Liability for Vaccine Injury*, 19 CORNELL J.L. & PUB. POL'Y 537 (2010).
The statutory system created by Congress to adjudicate vaccine injury claims provides little, if any, relief for injured vaccine recipients. In light of this, plaintiffs sometimes rely on state-law tort claims, but those are expensive and inefficient. The authors contend it is time to re-examine vaccine injury liability. One suggestion is to have an arbitrator sit on a vaccine panel, and allow experts to decide difficult scientific questions.
{44) ARBITRATION—GENERAL
{98} SUBJECT MATTER: MEDICAL MALPRACTICE
{133} COURT REFORMS

Sebastian R. Astrada, *Exporting the Rule of Law to Mongolia: Post-Socialist Legal and Judicial Reforms*, 38 DENV. J. INT'L L. & POL'Y 461 (2010).
The article examines formerly socialist Mongolia's legal and judicial reforms, and the role outside actors played in reformation. One aim of reform was to increase citizens' access to Mongolian courts. This has been, in part, achieved through alternative dispute mechanisms. The Asia Foundation has supported legal mediation to deal with social developments, and the Juvenile Rights Program has worked to promote greater use of arbitration and mediation in state courts.
{60} ADR—GENERAL
{102} SUBJ MATTER: PUBLIC POLICY
{125} COMPARISONS: HISTORICAL

Bernadette Atuahene, *Property Rights & the Demands of Transformation,* 31 MICH. J. INT'L L. 765 (2010).
This article discusses how past property dispossession has greatly contributed to present-day inequality and has become a politically explosive issue that can cause backlash. The author talks about negotiated land reforms and how in South Africa, negotiated land reform has been implemented such that owners have near absolute power to decide to whom, at what price, and on what terms they will sell their land. Lastly, the author looks at negotiated land reform as compared to eminent domain and delves into why negotiated land reform continues to flourish against the wishes of the majority.

{1} NEGOTIATION—GENERAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL
{125} COMPARISONS: HISTORICAL
{147} POWER IMBALANCE

Ian Ayres, *Never Say No: The Law, Economics, and Psychology of Counteroffers*, 25 OHIO ST. J. ON DISP. RESOL. 603 (2010).
The lecturer suggests there are too few counteroffers relative to rejections and too many counteroffers in relation to acceptances in legal negotiations. Therefore, the lecturer asserts offerees should work against their first impulse to reject "non-overlapping" offers, and the law might want to dampen the impulse to counteroffer.
{1} NEGOTIATION—GENERAL
{73} SUBJ MATTER—GENERAL

Jeremy Babener, *Structured Settlements and Single-Claimant Qualified Settlement Funds: Regulating in Accordance with Structured Settlement History,* 13 N.Y.U. J. LEGIS. & PUB. POL'Y 1 (2010).
This article analyzes the use of structured settlements to conclude negotiations. Structured settlements have increased in popularity because of their tax benefits, but it became clear the defendants were receiving much of the benefit from their use. This article argues it is in the interest of public policy to direct the benefit of structured settlements towards the plaintiff as long as it does not decrease its use.
{1} NEGOTIATION—GENERAL
{102} SUBJ MATTER: PUBLIC POLICY

Elizabeth E. Bader, *The Psychology of Mediation: Issues of Self and Identity and the IDR Cycle*, 10 PEPP. DISP. RESOL. L.J. 183 (2010).
This article is an interdisciplinary examination of how self-perception affects the inflation, deflation, resolution (IDR) cycle of mediation. After an extended discussion of several psychological theories of self-perception and how self-perception impacts one's interactions with her environment, the author applies the psychological theory to the practice of mediation, ultimately arguing successful mediation can hinge on the mediator's ability to deal with her own issues of self and identity.
{21}MEDIATION—GENERAL
{73}SUBJ MATTER: GENERAL

Laura K. Bailey, Note, *The Demise of Arbitration Agreements in Long-Term Care Contracts*, 75 MO. L. REV. 181 (2010).
The author investigates the ever-increasing use of pre-dispute binding arbitration agreements in nursing home contracts as well as the positives for care providers and disadvantages for patients. The author argues these pre-dispute binding arbitration agreements in long-term care contracts should not be enforced, after exploring recent developments and evaluating the Supreme Court of Missouri's decision in *Lawrence v. Beverly Manor*.
{44} ARBITRATION—GENERAL
{99} SUBJ MATTER: OTHER PROF MALPRACTICE
{110} SUBJ MATTER: TORTS—OTHER

Carrianne J.M. Basler & Scott A. Mell, *Beyond the Best-Interest-of-Creditors Test*, 29-5 AM. BANKR. INST. J. 24 (2010).
The authors argue liquidation analysis has become an important tool during the restructuring process. Liquidation analysis can be used as a source of critical information in negotiating with lenders, claim-holders, and other parties in interest. However, the use of cash collateral, preservation of rights, priority of liens, agreements as to how the operations will be managed, and the indemnification of parties makes it difficult to negotiate an agreement with disparate constituencies.
{1} NEGOTIATION—GENERAL
{74.5} SUBJ MATTER—BANKRUPTCY

Ashley Bassel, Note, *Order at the End of Life: Establishing a Clear and Fair Mechanism for the Resolution of Futility Disputes*, 63 VAND. L. REV. 491 (2010).
Increasing prevalence of futility disputes makes it vital states develop a fair, impartial, and patient-centered method of resolving futility disputes. Although the institutional ethics committee is an alternative forum for resolving end-of-life disputes, most of its members are employed by the healthcare institution, thus creating substantial risk of bias. Therefore, the author argues futility disputes should be resolved by independent Futility Dispute Resolution Boards, which would operate at the state and local level and be required to follow specific substantive and procedural regulations providing a clear, statutory procedure for resolving futility disputes.
{60} ADR—GENERAL
{73} SUBJ MATTER: GENERAL
{89} SUBJ MATTER: HOSPITALS
{102} SUBJ MATTER: PUBLIC POLICY

Benjamin A. Bauer, Note, *We Don't Live Here Anymore: A Critical Analysis of Government Responses to the Foreclosure Crisis,* 37 N. KY. L. REV. 121 (2010).
This note analyzes the government's response to the foreclosure crisis in the U.S. The author analyzes the successes of mandatory mediation programs in some states. The note cautions the use of "one size fits all" solutions to the mortgage crisis, but the author suggests mediation is the most effective method to overcome problems and provide relief to mortgagors.
{21} MEDIATION—GENERAL
{87} SUBJ MATTER: GOV'T

Philip Baumgarten, Comment, *Israel's Transboundary Water Disputes*, 30 J. LAND RESOURCES & ENVTL. L. 179 (2010).
This comment focuses on Israel's water disputes with her neighbors as populations in the region are expected to increase, and how the need for water, already in short supply, will be magnified. Negotiations to settle water disputes and provide for equitable distribution of the water resources will become more contentious. This legal analysis of Israel's water disputes seeks to provide some guidance to settling these issues in peace negotiations.
{1} NEGOTIATION—GENERAL
{103} SUBJ MATTER: PUBLIC UTILITIES

Danielle C. Beasley, *Recurring Concerns in Arbitration Proceedings: Examining the Contours of Arbitral Subpoenas Issued to Nonparty Witnesses*, 87 U. DET. MERCY L. REV. 315 (2010).
This article analyzes the current status of arbitral subpoenas under the Federal Arbitration Act and discusses the circumstances under which arbitrators are authorized to order subpoenas, as well as how such subpoenas can be enforced. The author suggests either Congress or the Supreme Court needs to ultimately address the conflicts created by the FAA and the Federal Rules of Civil Procedure in order to restore the reputation arbitration has enjoyed as an effective method of dispute resolution.
{44} ARBITRATION—GENERAL
{73} SUBJ MATTER: GENERAL

Connie J. A. Beck et al., *Divorce Mediation with and without Legal Representation: A Focus On Intimate Partner Violence and Abuse*, 48 FAM. CT. REV 631 (2010).
The authors assess the type participants in divorce mediations from Indiana and Arizona. Specifically, the article compares how pro se clients and represented clients participate in the mediation process. The article also

provides descriptive statistics concerning violent relationships and whether the client was represent by an attorney or a pro se client.
{21} MEDIATION—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{124} COMPARISONS: CROSS-CULTURAL
{147} POWER IMBALANCE

Connie J. A. Beck & Chitra Raghavan, *Intimate Partner Abuse Screening in Custody Mediation: The Importance of Assessing Coercive Control*, 48 FAM. CT. REV 555 (2010).
In custody mediations, mediators should look for types of distress beyond physical violence to protect more ably victims and participants. The authors reached this conclusion by conducting a study that demonstrated the varying forms of distress in custody mediations. To account for the various forms of distress, the authors recommend mediators consider measuring "coercive controlling behavior." Coercive controlling behavior includes victim fear, victim safety, and fairness in the mediation.
{21} MEDIATION—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{127} REQUIREMENTS: MANDATE TO USE
{133} COURT REFORMS
{149} QUALITY CONTROL

Justice William W. Bedsworth, *A Criminal Waste of Space: Send in the Clowns,* 52 ORANGE COUNTY LAW. 38 (2010).
This article is a candid discussion of arbitration agreements in medical contracts where one is required to sign the agreement for treatment given. The Justice admits, although he knows he is submitting himself to an inconvenient forum, he would rather expedite the process to seek treatment. His wife, on the other hand, refuses to sign arbitration agreements in medical contracts. The author highlights the steps his wife has taken to avoid such arbitration agreements.
{44} ARBITRATION—GENERAL
{89} SUBJ MATTER—HOSPITALS

Vicki Been, *Reassessing the State and Local Government Toolkit: Community Benefits Agreements: A New Local Government Tool or Another Variation on the Exactions Theme?*, 77 U. CHI. L. REV. 5 (2010).
This article examines the use of Community Benefits Agreements (CBAs) to protect residential communities from the threat of developers. These negotiated agreements ensure if development occurs, the residents will

receive some of the resulting profits. The article examines the benefits and drawbacks of CBAs and emphasizes CBAs should only be used when they are negotiated with transparency and when the negotiators are accountable.
{1} NEGOTIATION—GENERAL
{87} SUBJ MATTER: GOV'T

Pieter H.F. Bekker & Daniel Ginzburg, *The "Rotterdam Rules" and Arbitration: Questions and Warning Signs*, 65 J. DISP. RESOL. 68 (2010).
A new convention on contracts for carriage by sea contains arbitration provisions that require some untangling. This article discusses some of the issues they raise. The purpose of the new convention is to establish a uniform legal regime governing the rights and obligations of stakeholders in the maritime transport industry under a single contract for door-to-door carriage.
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L

Humberto Dalla Benardina de Pinho, *A Procedural Reading of Human Rights: The Fundamental Right to Proper Protection and the Option for Mediation as a Legitimate Route for the Resolution of Conflicts*, 44 REV. JURIDICA U. INTER. P.R. 545 (2010).
This article advocates the use of mediation as an alternative conflict resolution technique to supplement adjudication in Brazilian courts. The author views the current court system as "paternalistic" and argues citizens should have more direct involvement in the settling of their disputes. Allowing citizens to engage in mediation would help create a culture of peacemaking focused on the resolution of disputes.
{21} MEDIATION—GENERAL
{73} SUBJ MATTER: GENERAL
{133} COURT REFORMS

Reed D. Benson, *A Bright Idea From the Black Canyon: Federal Judicial Review of Reserved Water Right Settlements*, 13 U. DENV. WATER L. REV. 229 (2010).
This article examines the issue of federal judicial review of reserved right settlements reached in the context of state adjudications. The author considers the implications of federal review of reserved right settlements, concluding federal review would not significantly impact reserved rights litigation, but may have significant effects on future settlement efforts involving federal claims. The conclusion suggests federal judicial review may help address a couple of fundamental problems with the way that reserved right claims have been handled.

{84} SUBJ MATTER: ENVIRONMENT
{122} SETTLEMENT: AUTHORITY

Deborah Bennett Berecz, *Alternative Dispute Resolution: ADR: Architecture for Remodeling Families,* 89 MICH. BAR J. 26 (2010).
The author looks at the use of alternative dispute resolution (ADR) in Michigan in family law. The author discusses how ADR can provide sufficient and satisfying outcomes for divorcing families and suggests possibilities for future evolutions in family law. The author provides historical insight into those ADR processes available and those often adopted by attorneys and clients. The author considers the benefits and drawbacks of ADR and offers a summary of ADR opportunities in family law.
{60} ADR—GENERAL
{73} SUBJ MATTER: GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{136} ECONOMIC ADVANTAGES OF ADR

Phyllis E. Bernard, *Finding Common Ground in the Soil of Culture,* 31 HAMLINE J. PUB. L. & POL'Y 385 (2010).
This article discusses how global contract terms meant to apply across cultures are resisted at the grassroots level because in some countries the traditional culture shapes the business practices. The author asserts principled negotiation practices based on shared values can create a common ground that will support international transactions. Negotiating contracts in this manner will help the agreement to align with the social environment where it is to be executed.
{1} NEGOTIATION—GENERAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL

Phyllis E. Bernard, *The Lawyer's Mind: Why a Twenty-First Century Legal Practice Will Not Thrive Using Nineteenth Century Thinking (With Thanks to George Lakoff),* 25 OHIO ST. J. ON DISP. RESOL. 165 (2010).
This article examines how alternative dispute resolution can be used to improve the performance of lawyers and law firms. Specifically, the author contends thriving legal practices will adopt active listening and problem-solving skills for everyday communication with clients, client constituents, adversaries, and among the legal team itself. The author also contends "cultural competence" will become an integral measure of legal competence.
{60} ADR–GENERAL
{83} SUBJ MATTER: EDUCATION

{151} ROLE OF LAWYERS

Linda Beyea & Jeffrey Zaino, *Why These Economic Times Call for Outsourcing the Administration of Labor Arbitration Cases*, 65 J. DISP. RESOL. 49 (2010).
Cost savings is essential in these hard economic times for both labor and management. The labor-management community has historically used arbitration in lieu of litigation to save money. This article explains how additional cost savings can be achieved by using administered rather than self-administered arbitration.
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L

Richard Birke, *Neuroscience and Settlement: An Examination of Scientific Innovations and Practical Applications*, 25 OHIO ST. J. ON DISP. RESOL. 477 (2010).
The author explains how neuroscience, and neuroimaging in particular, can be used to gain an understanding of why some disputes settle and others do not. The author is both optimistic and cautious about the use of neuroscience to explain why disputes settle and to help mediators and negotiators improve.
{1} NEGOTIATION–GENERAL
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

John T. Blankenship, *The Vitality of the Opening Statement in Mediation: A Jumping-Off Point to Consider the Process of Mediation*, 9 APPALACHIAN J.L. 165 (2010).
The author examines the vitality of the opening statement in mediation within the context of the mediation process as a whole. The author concludes there is often a greater risk of lost opportunity—to apologize, to be candid, to build bridges—by skipping an opening statement.
{21} MEDIATION—GENERAL
{73} SUBJ MATTER: GENERAL

Kristen M. Blankley, *Current Developments in Alternative Dispute Resolution: Did the Arbitrator "Sneeze"?—Do Federal Courts Have Jurisdiction Over "Interlocutory" Awards in Class Action Arbitrations?*, 34 VT. L. REV. 493 (2010).
This article argues federal district courts do not have jurisdiction over interlocutory awards in class action arbitrations because such "awards" are not the type of "awards" contemplated by the Federal Arbitration Act and federal jurisdiction does not lie until the entire class action procedure has

been resolved on the merits. Although the Supreme Court did not address the definition of "award" in *Hall Street Associates v. Mattel*, the author suggests the Court might interpret the word "award" in section 10 in a narrow manner to mean a final award on the merits. The author suggests parties use appellate arbitrators to review these interlocutory decisions (under a contracted standard of review) in the absence of federal court jurisdiction.
{44} ARBITRATION—GENERAL
{73} SUBJ MATTER: GENERAL

Brenda Bratton Blom, Julie Galbo-Moyes & Robin Jacobs, *Community Voice and Justice: An Essay on Problem-Solving Courts as a Proxy for Change*, 10 U. MD. L.J. RACE RELIGION GENDER & CLASS 25 (2010).
The article looks at whether the justice system is adequately serving those with whom it comes into contact and whether courts should be problem-solving or not. The authors note courts have a great desire for expediency, which puts pressure on lawyers to "comply with a system that simply processes cases to move people through . . . ." The authors discuss the advent of pre-trial mediation as a step toward a better justice system and note such mediation has been very successful in Baltimore, Md. The authors go on to discuss problem-solving courts and critiques of such courts. They then present Maryland's model of "Probation Problem-Solving" and California's model of expanding the availability of treatment.
{60} ADR—GENERAL
{73} SUBJ MATTER: GENERAL

Joseph M. Boddicker, *Whose Dictionary Controls?: Recent Challenges to the Term "Investment" in ICSID Arbitration*, 25 AM. U. INT'L. L. REV. 1031 (2010).
Arbitral tribunals are still grappling with how best to define what constitutes an "investment" under the International Center for the Settlement of Investment Disputes (ICSID) Convention. The author suggests tribunals have the responsibility to define the term "investment" broadly, and argues for a subjective standard in applying the term in investment disputes.
{44} ARBITRATION—GENERAL
{75} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L

Scott A. Booth, Case Comment, *Arbitration Law—Second Circuit Holds Section 7 of the Federal Arbitration Act Does Not Permit Arbitration Panels to Issue Prehearing Document Subpoenas to Nonparties*—Life Receivables

Trust v. Syndicate 102 at Lloyd's of London, *549 F. 3d 210 (2d Cir. 2008),* 43 SUFFOLK U. L. REV. 1015 (2010).
This note discusses Section 7 of the Federal Arbitration Act, which deals with discovery and pre-hearing subpoenas. The author discusses how the Second Circuit has prohibited pre-hearing subpoenas requiring document production of third parties (not parties to the original arbitration agreement). This rejects the Eighth Circuit's "power-by-implication" analysis, relying on the arbiter's general Section 7 power to subpoena documents.
{44} ARBITRATION—GENERAL
{91} SUBJ MATTER: INSURANCE
{137} EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES

Mary J. Bortscheller, *Equitable but Ineffective: How the Principle of Common but Differentiated Responsibilities Hobbles the Global Fight Against Climate Change*, 10 SUSTAINABLE DEV. L. & POL'Y 49 (2010).
This article argues against the concept of common but differentiated responsibilities (CDR), which determine emissions reduction obligations based on whether countries are developed or non-developed. CDR plays a central role in climate negotiations, but major emitter developing countries like China skew the power balance in negotiations. The author argues more binding commitments on China will be necessary, rather than the simple CDR distinction in current climate negotiations.
{1} NEGOTIATION—GENERAL
{84} SUBJ MATTER: ENVIRONMENT
{92} SUBJ MATTER: INT'L

Dina Botwinick, Jennifer Effron & John Huang, *Saving Mom and Pop: Zoning and Legislating for Small and Local Business Retention,* 18 J.L. & POL'Y 607 (2010).
This article discusses how a new rent control bill in New York in 2008 gave tenants the option to renew their leases for a ten-year term. If the landlord agrees to renew, he and the tenant can negotiate the rent or either party can compel non-binding mediation. If after 90 days of negotiations there is no agreement, the tenant must initiate arbitration to retain the right to renew. The arbitrator's rent determination is binding.
{44} ARBITRATION—GENERAL
{90} SUBJ MATTER: RENTAL HOUSING
{128} REQUIREMENTS: STATUTORY OR RULES

Chesa Boudin & Rebecca Scholtz, *Strategic Options for Development of a Worker Center*, 13 HARV. LATINO L. REV. 91 (2010).

This article examines four organizing structures implemented by unions and worker groups in high-immigrant, low-wage sectors: 1) the traditional worker centered model, 2) the establishment of an independent union, 3) government-brokered codes of conduct, and 4) partnerships with international or national unions. Through case studies, the article analyzes each structure and considers the respective legal and policy implications. It asserts the establishment of a unified worker center is a critical first step.
{1} NEGOTIATION—GENERAL
{95} SUBJ MATTER: LABOR—MANAGEMENT (UNION)

Stuart M. Boyarsky, *Deference to a Reference: Incorporating Arbitration Where it Ought Not Be,* 11 FLA. COASTAL L. REV. 387 (2010).
Incorporation by reference (IBR) is mandatory arbitration, which occurs where a separate arbitration agreement to which the litigant was not a party compels the party to arbitrate. Although courts cannot compel parties to arbitrate, IBR is common because no express reference to arbitration need be made to form a binding agreement to arbitrate. Instead, the contract incorporates by reference arbitration rules or recitations of obligation to arbitrate. The author urges legislation to make the agreements unenforceable.
{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{102} SUBJ MATTER: PUBLIC POLICY

Matthew F. Boyer, *The Role of Historical Context in* New Jersey v. Delaware III *(2008)*, 11 DEL. L. REV. 101 (2010).
This article discusses the case in which the Supreme Court upheld Delaware's ability to block construction that would have extended from the New Jersey side of the Delaware River into Delaware. The boundary dispute, which involved a 12-mile circle of land that reaches across the Delaware River a few feet into NJ, has been tried at the Supreme Court three times. In 1847, President Polk appointed an arbitrator who determined Delaware had good title to the 12-mile circle of land.
{44} ARBITRATION—GENERAL
{84} SUBJ MATTER: ENVIRONMENT
{125} COMPARISONS: HISTORICAL

Kirsten Braun, Note, *Carbon Storage: Discerning Resource Biases that Influence Treaty Negotiations*, 22 GEO. INT'L ENVTL. L. REV. 649 (2010).
This note discusses the need for successful negotiation in the United Nations General Assembly to help countries come to an agreement on a successful emissions reduction treaty. With increasing scientific evidence that the Earth is warming, the stakes are high in the negotiations. The author argues

negotiators need to find new ways to bring a diverse group of parties together and help them reach their emission targets.
{1} NEGOTIATION—GENERAL
{84} SUBJ MATTER: ENVIRONMENT
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL

Richard L. (Tony) Braun, *Alternative Dispute Resolution: ADR in the ESD Green Enterprise Zone,* 89 MICH. BAR J. 22 (2010).
The author talks about the creation of a Green Enterprise Zone in Michigan and the exploration of innovative ways to reduce the cost of business that will bring added value to potential investors and entrepreneurs. One of the items explored was legal risk mitigation through the use of early alternative dispute resolution (ADR). The ADR section of the State Bar of Michigan argues the use of ADR makes sense from the perspective of maintaining business relationships and mitigating risk because it can save precious resources and relationships and minimizes barriers to progress and growth.
{60} ADR—GENERAL
{73} SUBJ MATTER: GENERAL
{77} SUBJ MATTER: COMMUNITY
{81} SUBJ MATTER: CORPORATE
{84} SUBJ MATTER: ENVIRONMENT
{136} ECONOMIC ADVANTAGES OF ADR

Terri Breer, *Spotlight on ADR – Part II: Family Law Mediation: Expanding the Frontiers of Alternative Dispute Resolution,* 52 ORANGE COUNTY LAW. 18 (January 2010).
This article discusses the two roles mediators play: transformative and problem solving. The article takes the position that family law mediators use the transformative approach to not only induce settlement, but to also affect positive change. A settlement mediator plays a more evaluative role. The author takes the position that although transformative mediation is relatively new, family law mediators have been using this style for quite some time.
{21} MEDIATION—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Igor M. Brin, Recent Development, *The Arbitration Fairness Act of 2009,* 25 OHIO ST. J. ON DISP. RESOL. 821 (2010).
This article explains the background behind the Arbitration Fairness Act of 2009 (AFA) and the Act itself. The author concludes the AFA is the largest

legislative decision on arbitration since the Federal Arbitration Act and could bring Congress into direct confrontation with the Supreme Court.
{44} ARBITRATION—GENERAL
{102} SUBJ MATTER: PUBLIC POLICY
{144} LEGISLATION

Joshua Briones & Ana Tagvoryan, *Update: Is International Arbitration in Latin America in Danger?,* 16 LAW & BUS. REV. AM. 131 (2010).
International arbitration provides a uniform practice, neutral forum, enforceable awards, and a final non-appealable solution. A country that wants to attract foreign investment must have firmly established and trusted arbitration mechanisms. Recent developments in Latin America, however, have transformed the region into a challenging forum for international arbitration and foreign investors. The last few years have seen radical changes in commercial arbitration in several Latin American countries.
{44} ARBITRATION—GENERAL
{75} SUBJ MATTER: COMMERCIAL
{136} ECONOMIC ADVANTAGES OF ADR

Jennifer Gerarda Brown, *"For You Also Were Strangers in the Land of Egypt:" How Procedural Law and Non-Law Enable Love for "Strangers" and "Enemies,"* 28 QUINNIPIAC L. REV. 667 (2010).
This article argues that within the code of civil procedure, mediation and principled negotiation have the power to awaken the "love" within the law. First, the article discusses the love found in the courtroom, which is embedded in civil procedure. Second, to find love outside the courtroom, the article analyzes the implementation of alternative dispute resolution techniques and the use of love demonstrated through voluntarily concessions, sacrifice, and redemption.
{60} ADR—GENERAL
{73} SUBJ MATTER: GENERAL

Jennifer Gerarda Brown, *Peacemaking in the Culture War Between Gay Rights and Religious Liberty*, 95 IOWA L. REV. 747 (2010).
This article argues mediation and negotiation could serve as valuable means of resolving conflict between LGBT and religious groups when disputes pit gay rights against religious liberty. She looks at several related court cases, noting the judges left room for parties to come to a private solution, and concludes this should be encouraged in lieu of litigation. Mediation and negotiation provide for better long-term solutions, especially when the communities must continue to live with each other for a long time.

{21} MEDIATION—GENERAL
{76} SUBJ MATTER: CIVIL RIGHTS
{137} EFFECT OF PROCESS OF NON-PARTICIPATORY PARTIES

Joseph R. Brubaker & Michael P. Daly, *Twenty-Five Years of the "Prospective Waiver" Doctrine in International Dispute Resolution:* Mitsubishi*'s Footnote Nineteen Comes to Life in the Eleventh Circuit,* 64 U. MIAMI L. REV. 1233 (2010).
The authors discuss the prospective waiver concept in international dispute resolution. Specifically, the authors discuss how this concept stems from the U.S. Supreme Court case *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.* The prospective waiver doctrine would allow parties to agree to resolve federal statutory claims outside of U.S. courts. However, there is conflict over whether parties abuse this opportunity by contractually evading the application of public policy codified in the federal statutes.
{60} ADR—GENERAL
{87} SUBJ MATTER: GOV'T
{92} SUBJ MATTER: INT'L
{102} SUBJ MATTER: PUBLIC POLICY
{126} REQUIREMENTS: CONTRACTUAL CLAUSES
{133} COURT REFORMS

Dana Renèe Bucy, *How Best to Protect Party Rights: The Future of Interim Relief in International Commercial Arbitration Under the Amended UNCITRAL Model Law*, 25 AM. U. INT'L. L. REV. 579 (2010).
Despite a history of difficulties with the ability of tribunals to enforce interim measures during international commercial arbitration proceedings, few nations have adopted recent revisions to the United Nations Commission on International Trade Law that outline the role of courts in enforcing the measures. The author argues states should adopt the model revisions, as the lack of uniform standards on interim relief undermines the validity of arbitration proceedings.
{44} ARBITRATION—GENERAL
{75} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L

David Buffa, Note, *A Proposed Remedy for the Dilemma of Innumerable Futures: Ukraine, Russia and NATO Membership,* 35 BROOKLYN J. INT'L L. 593 (2010).
Buffa examines the political and legal complications of the Ukraine-Russia relationship and states the future of the relationship should be supported by

"transparent preemptive renegotiation" of ambiguous treaty obligations. He argues this would ultimately lead to Ukraine membership in NATO.
{1} NEGOTIATION—GENERAL
{92} SUBJ MATTER: INT'L

William W. Burke-White & Andreas von Staden, *Private Litigation in a Public Law Sphere: The Standard of Review in Investor-State Arbitrations*, 35 YALE J. INT'L L. 283 (2010).
This article proposes a higher degree of deference should be given to national regulatory authorities, ad hoc arbitral tribunals. These tribunals should apply more appropriate standards of review for public law when investment treaty arbitration involves public law and the public law standard of review. Additionally, it suggests ICSID arbitrators should understand their role as public law actors and recognize their awards have diverse impacts.
{44} ARBITRATION—GENERAL
{75} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L

Elizabeth Burleson, *Environmental Law: China in Context: Energy, Water, and Climate Cooperation*, 36 WM. MITCHELL L. REV. 950 (2010).
In the international effort to reduce greenhouse gas emissions, success for reduction depends on international negotiations between China and the U.S. China is expected to account for 43 percent of the rise in energy. The author argues energy innovation cooperation can help reduce greenhouse gas emissions. This article examines China's role in achieving that goal with international climate change law, negotiations, cooperative measures, and sustainable development.
{1} NEGOTIATION—GENERAL
{84} SUBJ MATTER: ENVIRONMENT
{92} SUBJ MATTER: INT'L

Brian Burns, Note, *Freedom, Finality, and Federal Preemption: Seeking Expanded Judicial Review of Arbitration Awards Under State Law After Hall Street*, 78 FORDHAM L. REV. 1813 (2010).
This note examines the availability of contractually expanded judicial review of an arbitration award under state law, analyzing the meaning of the Supreme Court's holding in *Hall Street,* asking whether the FAA preempts state laws that otherwise would permit expanded review of arbitration awards. The author argues the FAA should preempt state laws that permit expanded review, unless parties have agreed state arbitration law will apply to the exclusion of the FAA.

{44} ARBITRATION—GENERAL
{73} SUBJ MATTER: GENERAL

Erin Butcher-Lyden, Note, *The Need for Mandatory Mediation and Arbitration in Election Disputes*, 25 OHIO ST. J. ON DISP. RESOL. 531 (2010).
This note assesses the implications of litigating election disputes. Based on public policy concerns, the author argues Congress should enact a federal statute providing mandatory mediation of all pre-election disputes arising more than one month before a scheduled election. The author argues the statute should require arbitration of all disputes arising within the month preceding an election, those arising on election eve, and after an election.
{60} ADR—GENERAL
{102} PUBLIC POLICY

Richard M. Calkins, *Mediation: The Radical Change From Courtroom to Conference Table*, 58 DRAKE L. REV. 357 (2010).
This article examines the rapid and increasing movement of litigants away from tradition courtroom litigation and lawsuits to the less adversarial realm of mediation. The author argues a major reason for this movement is a general fear of the adversarial process and, rather, a desire for amicable solutions. The article concludes this movement towards mediation is not simply a change of venue, but rather a shift in the perception of justice, requiring lawyers to redefine their duties to their clients. No longer is the lawyer simply a zealous advocate; now the successful attorney must be a problem-solver, harmonizer, and peacemaker.
{21} MEDIATION—GENERAL
{73} SUBJ MATTER: GENERAL

Deborah Calloway, *Using Mindfulness Practice To Work With Emotions*, 10 NEV. L.J. 338 (2010).
The author argues that understanding and working with one's own emotions is a key prerequisite to successfully mediating when the dispute involves emotionally charged individuals. A mediator must, the author argues, practice working with his emotions consistently in ordinary life in order to successfully use mediation techniques designed to work with emotions in the mediation and negotiation context.
{21} MEDIATION—GENERAL
{73} SUBJ MATTER: GENERAL
{149} QUALITY CONTROL

Terry Calvani & Karen Alderman, *BRIC in the International Merger Review Edifice*, 43 CORNELL INT'L L.J. 73 (2010).
The article looks at antitrust regulation of corporate mergers in the emerging economies of Brazil, Russia, India, and China (the so-called BRIC countries). It is the author's view that pre-merger filing negotiations are very productive, and when performed can save resources on all sides. Brazil and China permit pre-file negotiations; Russia does not, and it is still unknown what approach India will take with respect to pre-file negotiations.
{1} NEGOTIATION—GENERAL
{74} SUBJ MATTER—ANTITRUST
{136} ECONOMIC ADVANTAGES OF ADR

Ross W. Cannon, *New Act Requires Disclosures by Neutral Arbitrators*, 35 MONT. LAW. 19 (2009).
The author argues the newly enacted statute, the Fairness in Arbitration Act, still leaves several issues related to disclosures unresolved. The author then evaluates and explains how the new statute functions within the context of the Montana Uniform Arbitration Act.
{44} ARBITRATION—GENERAL
{73} SUBJ MATTER: GENERAL

Montre D. Carodine, *Keeping it Real: Reforming the "Untried Conviction" Impeachment Rule*, 69 MD. L. REV. 501 (2010).
The author looks at plea bargaining and Rule 410 of the Federal Rules of Evidence. The author discusses statements made during plea negotiations to encourage defendants to speak candidly to prosecutors. The author talks about how the theory underlying Rule 410 is that a defendant would be discouraged from speaking freely with prosecutors if he thought his statements could be used against him should plea negotiations break down and the case proceed to trial. The author specifically considers how the plea bargaining process is really a process of negotiation and the relationship between those negotiations and the Federal Rules of Evidence.
{1} NEGOTIATION—GENERAL
{82} SUBJ MATTER: CRIMINAL
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD
{132} CONFIDENTIALITY
{147} POWER IMBALANCE

David Caron & Leah D. Harhay, *A Call to Action: Turning the Golden State into a Golden Opportunity for International Arbitration*, 28 BERKELEY J. INT'L L. 497 (2010).

This article discusses how California can better utilize international arbitration. A current California law does not permit foreign attorneys to represent their clients in California, but this provision will expire in 2011. The author argues the state should implement new rules that streamline the procedure for out-of-state and foreign counsel. The author proposes legislation for California and compares the policies of other states.
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L

David S. Caudill, *Sports and Entertainment Agents and Agent-Attorneys: Discourses and Conventions Concerning Crossing Jurisdictional and Professional Borders*, 43 AKRON. L. REV. 697 (2010).
This article discusses the ethical dilemmas facing attorney-agents and the advantage this gives non-attorney agents. Because contract negotiation is such an integral part of being an agent, attorneys are generally better fit to do this. However, to ensure competent and trustworthy representations there needs to be (i) better regulation, (ii) relaxation of attorney ethics, (iii) an attorney requirement for all agents, and (iv) deregulation of sports agents.
{1} NEGOTIATION—GENERAL
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

Sungjoon Cho, *The Demise of Development in the Doha Round Negotiations*, 45 TEX. INT'L L.J. 573 (2010).
The author discusses the Doha Round Negotiations and how the differences in views between the developed and developing nations inhibit a final agreement. The article also discusses the importance of the nations coming to a final agreement in light of the global economic crisis. The article blames the impasse on the nations' protectionist trade policies. Finally, the author calls for U.S. leadership to resolve the stalemate and developing countries to embrace free trade more vigorously.
{1} NEGOTIATION—GENERAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL

Stephen J. Choi, Jill E. Fisch & A.C. Pritchard, *Attorneys as Arbitrators,* 39 J. LEGAL STUD. 109 (2010).
This article studies the role of attorneys as arbitrators in securities arbitration and finds arbitrators who also represent brokerage firms or brokers in other arbitrations award significantly less compensation to investor-claimants than do other arbitrators. There is no significant effect for attorney-arbitrators who represent investors or both investors and brokerage firms. The relation

between representing brokerage firms and arbitration awards remains significant even when controlling for political outlook.
{44} ARBITRATION—GENERAL
{106} SUBJ MATTER: SECURITIES

Allison Christians, *Networks, Norms, and National Tax Policy*, 9 WASH. U. GLOBAL STUD. L. REV. 1 (2010).
The Organization for Economic Cooperation and Development (OECD) plays an important role in developing "nonbinding" tax policy norms. It operates by allowing state representatives from the majority of developed countries, experts, and interest groups to engage in cooperative networks and negotiate new policy. This article examines how these transnational networks and negotiations facilitate tax policy recommendations.
{38} NON-BINDING RECOMMENDATION PROC—GENERAL
{92} SUBJ MATTER: INT'L
{108} SUBJ MATTER: TAX

Mike Christiansen, *Five Compelling Reasons to Build a Presuit Mediation Clause Into Your Business Contracts*, 84 FLA. BAR J. 44 (2010).
This note states lawyers who continually write business contracts for clients generally use the same clauses regarding venue, jurisdiction, etc. Lawyers should instead focus on steering business clients away from litigation. The note argues typically, attorneys fail to recognize the success of a mediation until a client has been "dragged through the legal meat grinder," but presuit mediation is a better alternative for five reasons: it's fast, cheap, informal, empowering, and confidential.
{21} MEDIATION—GENERAL
{73} SUBJ MATTER: GENERAL

Hanna Chung, *Smaller Exchanges, Larger Regimes: How Trading in Small, Interdependent Units Affects Treaty Stability*, 10 CHI. J. INT'L L. 825 (2010).
This comment explores how exchanging smaller units of entitlement can benefit treaty negotiations. Doing this builds interdependence in order to incentivize parties to stick to their commitments. It focuses on two successful negotiations that utilized this method: the United Nations Convention on the Law of the Sea (UNCLOS) and the Agreement on Trade Related Aspect of Intellectual Property Rights (TRIPS).
{1} NEGOTIATION—GENERAL
{92} SUBJ MATTER: INT'L

Jennifer Church, *Avoiding Further Conflict: A Case Study of the New York City Watershed Land Acquisition Program in Delaware County, NY*, 27 PACE ENVTL. L. REV. 393 (2010).
This case study analyzes part of an agreement between New York, N.Y. and its upstate watershed communities, specifically how environmental dispute resolution can be applied to this conflict in order to achieve a long-term solution that will benefit the residents of Delaware County, N.Y.
{1} NEGOTIATION—GENERAL
{84} SUBJ MATTER: ENVIRONMENT

Sarah Rudolph Cole, *Let the Grand Experiment Begin:* Pyett *Authorizes Arbitration of Unionized Employees' Statutory Discrimination Claims*, 14 LEWIS & CLARK L. REV. 861 (2010).
The author offers a data-based analysis defending the labor arbitrator's ability to decide statutory claims of discrimination and provide access to justice. Cole compares arbitration and litigation results and concludes arbitration does not result in second-class justice. In examining the data, she notes expert labor arbitrators apply the law of the land and not the "law of the shop." Cole also assesses how the contemporary union fits into an arbitration system deciding statutory claims and allowing bargaining to assign arbitration of claims of discrimination. She concludes union members, including women, are not compromised by their unions in such a scheme.
{44} ARBITRATION—GENERAL
{95} SUBJ MATTER: LABOR-MANAGEMENT (UNION)

Tony Cole, *Authority and Contemporary International Arbitration*, 70 LA. L. REV. 801 (2010).
The article discusses whether contemporary international arbitration is meeting its potential as a dispute resolution procedure. The author's contention is no. International arbitration is growing more popular, the author notes, but it has "steadily and unavoidably become detached from the elements that delivered its original validity." Thus, the author's contention is contemporary international arbitration is becoming less and less of a system that genuinely resolves disputes. Instead it is just a way to get an enforceable judgment in a context where enforceable judgments are rare. The author suggests involving "procedural special masters" and reconceptualizing the role party-nominated arbitrators play in international arbitration in order to fix this perceived problem.
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L

Timothy J. Coley, *Contracts, Custom, and the Common Law: Towards a Renewed Prominence for Contract Law in American Wrongful Discharge Jurisprudence*, 24 BYU J. PUB. L. 193 (2010).
Coley argues given the fact that the U.S. has had no job growth in the last ten years, using employment contracts will bring back some certainty in employment. He argues vertical contractual employment relationships provide certainty, predictability, and clarity whereas the common law employment-at-will scheme is highly unstable. Coley concludes employment contracts would be a positive development in the suffering market.
{38} NON-BINDING RECOMMENDATION PROC—GENERAL
{93} SUBJ MATTER: LABOR—GENERAL

Robert J. Condlin, *Legal Bargaining Theory's New "Prospecting" Agenda: It May Be Social Science, But Is It News?*, 10 PEPP. DISP. RESOL. L.J. 215 (2010).
This article argues the social sciences are overused as a foundational explanatory and anticipatory basis for legal negotiations. This overuse short-changes approaches such as anecdotal stories of best practices from experienced negotiators. The author discusses Prospect Theory and its notion of anchoring, which has an important place in helping to provide an empirical basis for negotiations. Ultimately however, successful negotiations cannot hinge on a purely social scientific approach.
{1}NEGOTIATION—GENERAL
{73}SUBJ MATTER: GENERAL

Anna Conley, *The Montana Supreme Court's Continued, Not-So-Subtle Assault on Arbitration*, 35 MONT. LAW. 6 (2010).
The author argues the Montana Supreme Court systematically treats arbitration and non-arbitration provisions unequally when applying contract law doctrines. The author insists that the Montana Supreme Court must recognize this deficiency within its case law. She argues the court's approach contravenes traditional contract principles at the expense of predictability.
{44} ARBITRATION—GENERAL
{75} SUBJ MATTER: COMMERCIAL
{79} SUBJ MATTER: CONSUMER
{126}REQUIREMENTS: CONTRACTUAL CLAUSES
{147} POWER IMBALANCE

Peter Reed Corbin & John E. Duvall, *Employment Discrimination,* 61 MERCER L. REV. 1073 (2010).
This article discusses the arbitrability of employment claims. The author discusses cases in which the Supreme Court addresses the issue of arbitration of employment discrimination claims of union-represented employees under collective bargaining agreements.
{44} ARBITRATION—GENERAL
{94} SUBJ MATTER: LABOR—DISCRIMINATION
{128} REQUIREMENTS: STATUTORY OR RULES

Dennis S. Corgill, *Competitive Injury and Non-Exclusive Patent Licensees*, 71 U. PITT. L. REV. 641 (2010).
This article analyzes two different approaches a negotiator could take when negotiating damages for a patent infringement. The first compensatory approach allows the patentee to recover a share of the infringer's economic benefits from practicing the patented invention. The second competitive injury approach calculates the total lost profits from the infringement. The author advocates the latter and argues courts should allow such a compensation system.
{1} NEGOTIATION—GENERAL
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Antonia Cowan, *You Can't Get There from Here: IGRA Needs Reinvention into a Relevant Statute for a Mature Industry*, 17 VILL. SPORTS & ENT. L.J. 309 (2010).
This article argues for reinvention of the Indian Gaming Regulatory Act (IGRA). IGRA requires states to negotiate in good faith with Indian tribes to form Class III gaming compacts, but because of *Seminole Tribe v. Florida*, there is not a concrete remedy. This article proposes amendments to the IGRA that would retain the federal policy of encouraging economic opportunities in the gaming industry, with a more enforceable standard.
{1} NEGOTIATION—GENERAL
{104} SUBJ MATTER: REGULATORY
{144} LEGISLATION

Charles B. Craver, *Negotiation Ethics for Real World Interactions*, 25 OHIO ST. J. ON DISP. RESOL. 299 (2010).
The author discusses the current ethical rules governing lawyer conduct during bargaining interactions, and the standards "communitarians" would like to impose on practicing attorneys. The author examines how ethical rules

should be applied to negotiations. Finally, the author evaluates ethical issues associated with collaborative and cooperative law movements.
{60} ADR—GENERAL
{83} SUBJ MATTER: EDUCATION
{138} ETHICS: GENERAL

Charles B. Craver, *The National Labor Relations Act at 75: In Need of a Heart Transplant*, 27 HOFSTRA LAB. & EMP. L.J. 311 (2010).
As part of a proposal to overhaul the NLRA and make it relevant to the 21st century and the information economy, the author includes a section on how to help newly certified unions achieve first contracts. He recommends a mediation procedure, followed by possible mandatory arbitration after a time limit. The author suggests an issue-by-issue approach for arbitration, encouraging party negotiation. Alternatively, Congress could make the arbitration non-binding.
{60} ADR—GENERAL
{95} SUBJ MATTER: LABOR-MANAGEMENT (UNION)

David Cuillier, *Honey v. Vinegar: Testing Compliance-Gaining Theories in the Context of Freedom of Information Laws*, 15 COMM. L. & POL'Y 203 (2010).
The article, in part, looks at the growing use of mediation in resolving public records disputes. About half of U.S. states offer some sort of mediation process. The author hypothesizes the success of these processes depends on the attitudes of the public officials in charge. He views the trend toward ADR as promising and believes it may allow journalists access to information more quickly than the traditional litigation route.
{21} MEDIATION—GENERAL
{102} SUBJ MATTER: PUBLIC POLICY
{133} COURT REFORMS

John M. Cunningham, *Handling Fiduciary Issues in Limited Liability Company Formations Under the New Hampshire Limited Liability Company Act – A Practical Introduction*, 8 PIERCE L. REV. 177 (2010).
This article highlights the importance of negotiating fiduciary duties when forming a limited liability company in the context of the New Hampshire Limited Liability Act. Negotiations must strike a balance between the LLC's members interest in avoiding manager misconduct and their interest in protecting managers from undue removal and personal liability for entering into inherently risky business deals. The author contrasts using arbitration and mandatory mediation over judicial proceedings to resolve LLC disputes.

{44} ARBITRATION—GENERAL
{81} SUBJ MATTER: CORPORATE

Phil Dabney & Magali Wysong, *The Death of Mandatory Arbitration in Public Works Disputes: Does Equal Opportunity Knock for a Better Way?*, 18 NEV. LAW. 6 (2010).
In 2009, the Nevada Legislature eliminated the requirement that public works disputes must be resolved by binding arbitration. This allows flexibility for dispute resolution, but the likely result will be a substantial increase of claims going to court. The article explains concerns with this result, such as the complex issues in construction claims and the court's overcrowded docket.
{44} ARBITRATION—GENERAL
{80} SUBJ MATTER: CONSTRUCTION
{103) SUBJ MATTER: PUBLIC UTILITIES

Ronald R. Darbee, Comment, *Personal Jurisdiction as a Defense to the Enforcement of Foreign Arbitral Awards,* 41 MCGEORGE L. REV. 345 (2010).
The author discusses how the U.S. has not made any international agreement for the recognition and enforcement of foreign judgments, but it has acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, a major multinational treaty obligating the enforcement of foreign arbitral awards. The author discusses how courts in the U.S. have refused to enforce foreign arbitral awards for lack of personal jurisdiction, but have usually enforced foreign judgments without personal jurisdiction.
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Kenneth G. Dau-Schmidt & Benjamin C. Ellis, *The Relative Bargaining Power of Employers and Unions in the Global Information Age: A Comparative Analysis of the United States and Japan*, 20 IND. INT'L & COMP. L. REV. 1 (2010).
Although both Japanese and American unions have seen a reduction in their bargaining power, the different labor laws in each country create different landscapes for bargaining between union and employer. In addition, the different structure of American and Japanese labor unions has advantages and disadvantages for each. The author concludes although American employers have more economic weapons, the structure of American unions may perhaps facilitate more effective and efficient agreements.
{1} NEGOTIATION—GENERAL

{95} SUBJ MATTER: LABOR—MANAGEMENT (UNION)
{124} COMPARISONS: CROSS-CULTURAL

Benjamin G. Davis & Keefe Snyder, *Online Influence Space(s) and Digital Influence Waves: In Honor of Charly*, 25 OHIO ST. J. ON DISP. RESOL. 201 (2010).
The authors explore online influence and place online influence spaces in context with current and earlier physical space influence movements. The authors use a sociological study to examine online influence spaces in the ADR context. The goal of the essay is to help teachers and students see the possible significance of integrating online influence spaces to address problems occurring during a legal career.
{60} ADR—GENERAL
{78} SUBJ MATTER: COMPUTER
{155} TEACHING

Andrew B. Dawson, *Collective Bargaining Agreements in Corporate Reorganizations*, 84 AM. BANKR. L.J. 103 (2010).
This article debates the proper treatment of collective bargaining agreements (CBAs) in corporate reorganization. Congress passed § 1113 to establish a standard for the rejection of CBAs during bankruptcy. There has been a split in the circuit courts on interpreting § 1113 and there is a fear debtors can use this as a "union-busting" tool or unions could use it to prevent debtors from emerging from bankruptcy. This article presents empirical data to test the above assumptions and finds the different interpretations of § 1113 are irrelevant in practice, but the ambiguities in the law need to be clarified.
{1} NEGOTIATION—GENERAL
{74.5} SUBJ MATTER: BANKRUPTCY
{95} SUBJ MATTER: LABOR—MANAGEMENT (UNION)

Jacques deLisle & Elizabeth Trujillo, *Consumer Protection in Transnational Contexts*, 58 AM. J. COMP. L. 135 (2010).
This article provides an overview of U.S. consumer protection law in cases with an international dimension. Many U.S. jurisdictions consider arbitration clauses generally enforceable in consumer contracts, but clauses have been more frequently struck down in consumer contracts than in commercial contracts. The courts strike down arbitration clauses in consumer cases because of greater problems such as contracts of adhesion and bias against non-repeat players. Many of these problems are worse still in international consumer arbitration. In addition, the Magnuson-Moss Warranty Act, which encourages informal dispute resolution, has been controversial because some

view the provisions as depriving consumers of fair process and adequate remedies.
{44} ARBITRATION—GENERAL
{79} SUBJ MATTER: CONSUMER
{92} SUBJ MATTER: INT'L

Michael P. Dickey, *ADR Gone Wild: Is It Time for a Federal Mediation Exclusionary Rule?*, 25 OHIO ST. J. ON DISP. RESOL. 713 (2010).
The author describes the disparate treatment of mediation confidentiality, and its relationship to the courts' ability to monitor parties' participation. The author explains this disparate treatment has led to an explosion in motion practice related to good faith in mediation. In order to counteract this trend, this article proposes adopting a rule against using statements or conduct during mediation as a basis for most sanction motions under FRCP Rule 16.
{21} MEDIATION—GENERAL
{73} SUBJ MATTER: GENERAL
{132} CONFIDENTIALITY

Bradley Dillon-Coffman, Comment, *Revising the Revision: Procedural Alternatives to the Arbitration Fairness Act*, 57 UCLA L. REV. 1095 (2010).
In the past decade, debate over the fairness of predispute arbitration agreements has intensified. Recently, some members of Congress have opposed these agreements and are attempting to outlaw them via the proposed Arbitration Fairness Act. The author argues Congress should consider less drastic alternatives than outlawing predispute agreements. Arbitration offers less expensive, more efficient forums, but the mechanisms of arbitration heavily favor businesses. The author proposes businesses should shoulder the costs associated with arbitration and an institutional middleman should be involved in arbitral proceedings.
{44} ARBITRATION—GENERAL
{73} SUBJ MATTER: GENERAL
{102} SUBJ MATTER: PUBLIC POLICY
{144} LEGISLATION

M. Scott Donahey, *Unique Considerations for the International Arbitration of Intellectual Property Disputes: How to Structure the Arbitration to Make it More Attractive to In-House IP Counsel, with Suggested Arbitration Agreements*, 65 J. DISP. RESOL. 38 (2010).
In the U.S., the use of arbitration to resolve domestic intellectual property disputes has been steadily increasing for several years. This article details the reasons for the increase in the use of arbitration to resolve intellectual

property disputes, and it provides an example of a suggested arbitration agreement for dealing with international patent disputes.
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Steven Donziger, Laura Garr & Aaron Marr Page, *Rainforest Chernobyl Revisited: The Clash of Human Rights and BIT Investor Claims: Chevron's Abusive Litigation in Ecuador's Amazon*, 17 HUM. RTS. BR. 8 (2010).
This article chronicles the extensive litigation against Chevron for damages in the Ecuadorian rainforest, and Chevron's attempts at using an international arbitration procedure to have U.S. courts refuse to enforce the ruling of any Ecuadorian court. The authors examine Chevron's attempted use of the bilateral investment treaty to secure rights before the arbitral tribunal, and argue this could be disastrous for human rights claims against large multinational corporations.
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L
{137} EFFECT OF PROCESS OF NON-PARTICIPATORY PARTIES
{147} POWER IMBALANCE

Christopher R. Drahozal, *Contracting Around* Hall Street, 14 LEWIS & CLARK L. REV. 905 (2010).
The author examines the issue of whether parties are allowed to expand judicial review of arbitration by relying on authority other than the Federal Arbitration Act, which was an issue was left undecided in *Hall Street Associates, L.L.C. v. Mattel, Inc.* The author concludes forum selection is important as federal courts are unlikely to enforce a contract to enhance review, but a state court is more likely to do so if state law provides for such enhanced review. Additionally, Drahozal zeroes in on how to draft a contract that would allow the parties to get around *Hall Street*, and he concludes these techniques would be best utilized in state courts. He also discusses whether the *Erie* Doctrine is implicated in these situations.
{44} ARBITRATION—GENERAL
{73} SUBJ MATTER: GENERAL

Christopher R. Drahozal & Stephen J. Ware, *Why do Businesses Use (or Not Use) Arbitration Clauses?*, 25 OHIO ST. J. ON DISP. RESOL. 433 (2010).
This paper analyzes past studies finding the use of arbitration was failing in its attempts to compete with litigation. In Part I of the paper, the authors summarize these studies in detail. Throughout the rest of the paper, the

authors offer criticism of these studies, and examine why parties may or may not want to include arbitration clauses in their contracts.
{44} ARBITRATION—GENERAL
{81} CORPORATE
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Jordan A. Dresnick, *The Minefield of Liability for Minors: Running Afoul of Corporate Risk Management in Florida,* 64 U. MIAMI L. REV. 1031 (2010).
A subsection of the article looks at the rich conflict and harmony among the cases on preinjury waiver of liability to minors and arbitration setting clauses. The court cases specifically consider whether a minor is bound by an arbitration clause found in a contract entered into by the minor's parent(s). The cases discussed by the author compare the distinction between parents waiving the rights of minors in the arbitration context and parents waiving the rights of minors to seek redress in a court of law.
{44} ARBITRATION—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{137} EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES

Rachel Dubin, *Museums and Self-Regulation: Assessing the Impact of Newly Promulgated Guidelines on the Litigation of Cultural Property*, 18 U. MIAMI BUS. L. REV. 101 (2010).
A subsection of the article looks at the procedures used by museums when ownership claims arise. According to the author, museums favor arbitration methods over the expense of litigation in concert with the guidelines promulgated by the American Association of Museums, the Washington Conference, and the American Association of Museum Directors. All three of the guidelines declare the use of alternative dispute mechanisms is preferred to litigation.
{60} ADR—GENERAL
{73} SUBJ MATTER: GENERAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES
{136} ECONOMIC ADVANTAGES OF ADR

Patrick Dumberry, *The Legal Standing of Shareholders before Arbitral Tribunals: Has Any Rule of Customary International Law Crystallised?*, 18 MICH. ST. J. INT'L L. 353 (2010).
The author examines whether a customary norm in international law has emerged that would protect shareholders and their legal standing before arbitral tribunals. The author argues no such rule of customary law has crystallized yet because: (1) there is no opinion juris evident in the bilateral

investment treaties ratified within the past several decades, and (2) any such customary norm would violate other general principles of international law.
{44} ARBITRATION—GENERAL
{81} SUBJ MATTER: CORPORATE
{92} SUBJ MATTER: INT'L

Kate Early, *2009 Survey of Rhode Island Law*, 15 ROGER WILLIAMS U. L. REV. 370 (2010).
This article summarizes the Supreme Court's decision in *City of East Providence v. Int'l Ass'n of Firefighters Local 850*, enforcing an arbitration award that granted cancer benefits to firefighters. After a firefighter's request to have his sick leave converted to "injured on-duty" time was denied, the International Association of Firefighters Local 850 ("Local") filed a grievance in accordance with the collective-bargaining agreement, which was again denied by human resources. An arbitrator ruled in favor of Local.
{44} ARBITRATION—GENERAL
{95} SUBJ MATTER: LABOR-MANAGEMENT (UNION)

Noam Ebner et al., *You've Got Agreement: Negoti@ting via Email*, 31 HAMLINE J. PUB. L. & POL'Y 427 (2010).
This article discusses the gap between what is being taught to negotiation students and what is happening in the real world, arguing the exercises students perform are for in-person negotiations, and adjustments are not made to the exercise for negotiations that take place over phone or via e-mail. The authors posit email can have big advantages in negotiation and suggests several skill sets students learning to be negotiators should develop.
{1} NEGOTIATION—GENERAL
{83} SUBJ MATTER: EDUCATION
{149} QUALITY CONTROL
{155} TEACHING

Yael Efron & Noam Ebner, *Get Ripped & Cut before Training: Adventure Preparation for the Negotiation Trainer*, 31 HAMLINE J. PUB. L. & POL'Y 523 (2010).
This article explores new methods for training negotiation teachers outside of the normal procedures. The authors suggest pre-training exercises for the trainer that will heighten their curiosity before they train new negotiators, such as targeting people for interactions on the way to the training sessions. This includes ideas such as conversing with a fellow bus passenger, asking a person for a piece of information, and identifying someone who is having trouble and lending assistance.

{1} NEGOTIATION—GENERAL
{83} SUBJ MATTER: EDUCATION
{155} TEACHING

Russell Engler, *Pursuing Access to Justice and Civil Right to Counsel in a Time of Economic Crisis*, 15 ROGER WILLIAMS U. L. REV. 472 (2010).
The author argues the role of judges, court-ordered mediators, and clerks requires revision in order to enhance access to justice. The author also advocates the use of a wide range of limited assistance programs and increasing utilization of lay advocates to expand the civil right to counsel. Court-ordered mediators and clerks, the author believes, should be permitted or even required to assist unrepresented litigants.
{21} MEDIATION—GENERAL
{76} SUBJ MATTER: CIVIL RIGHTS

Richard A. Epstein, *Carbon Dioxide: Our Newest Pollutant*, 43 SUFFOLK U. L. REV. 797 (2010).
In this note, the author argues because of the inability to impose the will of the U.S. on the rest of the world regarding carbon emissions, international negotiations are necessary to fix the problem. Even though international negotiations take several years, and you are unable to choose your negotiating partners, the author believes that hard bargaining with other nations is the only way to significantly reduce emissions.
{44} ARBITRATION—GENERAL
{84} SUBJ MATTER: ENVIRONMENT
{92} SUBJ MATTER: INT'L

Howard M. Erichson, *The Trouble with All-or-Nothing Settlements,* 58 KAN. L. REV. 979 (2010).
This article, looking at aggregate litigation since *Amchem Products, Inc. v. Windsor* and *Ortiz v. Fibreboard Corp.*, reviews the trouble caused by all-or-nothing settlements. *Amchem* and *Ortiz* represented a high-water mark in the search for comprehensive resolutions. Both of those asbestos settlement class actions were driven by defendants' insistence on inclusiveness and both were ultimately rejected for overreaching.
{60} ADR—GENERAL
{110} SUBJ MATTER: TORTS—OTHER
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Randy Erickson, *Tactics and Strategies for Mediating the Multi-Party Complex Construction Case,* 52 ORANGE COUNTY LAW. 42 (2010).

This article highlights and answers ten questions regarding multi-party construction mediation. It advocates for the use of mediation as a means to settle disputes. The author answers questions regarding skepticism for using mediation to settle discussing confidentiality, methodology, neutrality, and ethical concerns.
{21} MEDIATION—GENERAL
{73} SUBJ MATTER: GENERAL
{80} SUBJ MATTER: CONSTRUCTION

Samuel Estreicher, *Competition in the Global Workplace: The Role of Law in Economic Markets: Trade Unionism Under Globalization: The Demise of Voluntarism?*, 54 ST. LOUIS L.J. 415 (2010).
This article argues due to the decline of manufacturing in the U.S. and the weakened position of trade organizations in the private sector, unions and trade organizations have turned increasingly toward politics to meet their objectives. The author argues globalization has also played a significant role in the shift to politics, as this approach is similar to that taken by European unions and trade organizations. The article further analyzes how this shift has affected legislation, specifically President Obama's healthcare reform.
{60} ADR—GENERAL
{95} SUBJ MATTER: LABOR MANAGEMENT (UNION)

Stacey B. Evans, *Sports Agents: Ethical Representatives or Overly Aggressive Adversaries?*, 17 VILL. SPORTS & ENT. L.J. 91 (2010).
This article analyzes the ever-expanding role of sports and discusses ethical issues plaguing today's sports agents. Additionally, it compares the different styles of contract negotiation, showing that stricter ethical regulation in sports would benefit agents, players and leagues. Often the most successful sports agents/negotiators work collaboratively. This article argues having a broader skill set makes collaboration and negotiating easier.
{1} NEGOTIATION—GENERAL
{107} SUBJ MATTER: SPORTS AND ENTERTAINMENT
{151} ROLE OF LAWYERS

Melissa Farris, Note, *The Sound of Falling Trees: Integrating Environmental Justice Principles Into the Climate Change Framework for Reducing Emissions from Deforestation and Degradation (REDD)*, 20 FORDHAM ENVTL. L. REV. 515 (2010).
This note discusses recent developments in international climate change policy and REDD negotiations meant to reduce deforestation emissions. The author notes a negotiated agreement must address the needs of all groups and

must incorporate three principles: the recognition of indigenous right to environmental self-determination, the entitlement to redress for environmental injustices, and the direct consultation to facilitate representation of their voices at international climate change negotiations.
{1} NEGOTIATION—GENERAL
{84} SUBJ MATTER: ENVIRONMENT

Richard J. Figura, *Alternative Dispute Resolution: Why Local Government Needs to Mediate,* 89 MICH. BAR J. 36 (2010).
The author discusses the benefits of mediation to the government. The author argues that mediation avoids the expense of litigation, avoids the time spent in litigation, is private and confidential, and provides a chance to establish sound public policy and good will. The author also discusses how mediation would be effective in disputes between the governmental unit and a third party, disputes between governmental agencies, and disputes within governmental agencies.
{21} MEDIATION—GENERAL
{73} SUBJ MATTER: GENERAL
{87} SUBJ MATTER: GOV'T
{136} ECONOMIC ADVANTAGES OF ADR

Keith Finch & Brian S. Wheeler, *Effective and Efficient Arbitration in Virginia*, 9 APPALACHIAN J.L. 143 (2010).
The article is intended to help parties navigate the arbitration process in Virginia, focusing mainly on the pitfalls that may arise from a poorly worded arbitration agreement and how to draft an agreement that avoids them. The article also discusses how an arbitration process may break down as a result of a party's refusal to proceed, and what steps to take to move the process.
{44} ARBITRATION—GENERAL
{73} SUBJ MATTER: GENERAL

Elad Finkelstein & Shahar Lifshitz, *Bargaining in the Shadow of the Mediator: A Communitarian Theory of Post-Mediation Contracts*, 25 OHIO ST. J. ON DISP. RESOL. 667 (2010).
The authors propose a communitarian theory of mediation and post-mediation contracts. Based on this theory, the authors propose a regulatory regime to counteract some of the perceived negative components of the current mediation process.
{21} MEDIATION—GENERAL
{73} SUBJ MATTER: PUBLIC POLICY

Keith R. Fisher, *Education for Judicial Aspirants*, 43 AKRON L. REV. 163 (2010).
This article argues there is a need for special training for those who aspire to a judicial office. Specialized training would include (i) graduate professional schools for the study of law be established, (ii) judicial appointment from practicing attorneys who are familiar with business disputes, and (iii) training in non-legal fields. The training in these areas will help judges with their growing role in facilitating alternative dispute resolution processes.
{60} ADR—GENERAL
{83} SUBJ MATTER: EDUCATION

Matthew L.M. Fletcher et al., *American Indian Law: Indian Country Law Enforcement and Cooperative Public Safety Agreements,* 89 MICH. BAR J. 42 (2010).
The author looks at deputization agreements in Michigan, which give tribal, federal, state, or city law enforcement officials power to enforce laws outside their own jurisdictions regardless of the identity of the perpetrator. The author discusses how cross-deputization agreements are frequently the product of intense and complicated negotiations between local and tribal authorities and how many barriers can often arise during these negotiations. The law enforcement agreements considered by the author in this article are in Michigan and are entered into at the local level.
{1} NEGOTIATION—GENERAL
{88} SUBJ MATTER: GOV'T CONTRACTS
{124} COMPARISONS: CROSS-CULTURAL

Zeke Fletcher, *American Indian Law: Indian Gaming and Tribal Self-Determination Reconsidering the 1993 Tribal-State Gaming Compacts,* 89 MICH. BAR J. 38 (2010).
This article looks at the Indian Gaming Regulatory Act (IGRA) and Indian gaming compacts. The author talks about how the IGRA has a fundamental, almost fatal flaw: the Eleventh Amendment prohibits tribes from bringing suit in federal court to force a state to negotiate in good faith. The author specifically looks at the compromise the Michigan tribes and the state reached in 1993 allowing for "revenue sharing." The author then looks at whether the compact allows for renegotiation or if the original compact will continue without change and adhere to the original terms.
{1} NEGOTIATION—GENERAL
{88} SUBJ MATTER: GOV'T CONTRACTS

Peri Fluger, Comment, *The End is Nigh: Will Turnaround Agreements Lead to Hollywood's Financial Demise?*, 19 WIDENER L.J. 977 (2010).
A common provision in a producer's contract is a turnaround agreement. The producer will typically specify a first negotiation clause and turnaround rights. This provision can have significant implications on future negotiations. One, producers are not accustomed to reading the legal language and can be easily manipulated and two, it limits negotiation rights. This article examines the impact of these clauses.
{1} NEGOTIATION—GENERAL
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT
{147} POWER IMBALANCE

Kenneth H. Fox, *Negotiation as a Post-Modern Process*, 31 HAMLINE J. PUB. L. & POL'Y 367 (2010).
This article discusses the theory that the principles behind teaching negotiation strategies are overly limited. The author argues negotiation teachers must recognize this limitation and incorporate additional teaching strategies for overcoming it, such as looking beyond needs and interests and examining social contexts. Another strategy the author suggests is to employ a different conception of the negotiation process to opening up new avenues for research and teaching.
{1} NEGOTIATION—GENERAL
{73} SUBJ MATTER: GENERAL
{155} TEACHING

Donald R. Frederico, Feeney v. Dell, Inc.*: Consumer Class Actions and Public Policy*, 54 B.B.J. 6 (2010).
Frederico examines a Massachusetts Supreme Court decision that held class action waivers in arbitration clauses in consumer contracts are unenforceable. He explains courts are split on consumer contracts enforceability and that Court's decision in *Feeney v. Dell, Inc.* is easily misinterpreted. He stresses courts should realize *Feeney v. Dell, Inc.* is not a rejection of the balancing of consumer and business interests.
{44} ARBITRATION—GENERAL
{79} SUBJ MATTER: CONSUMER
{126}REQUIREMENTS: CONTRACTUAL CLAUSES

Marsha B. Freeman, *Comparing Philosophies and Practices of Family Law Between the United States and Other Nations: The Flintstones vs. The Jetsons*, 13 CHAP. L. REV. 249 (2010).

The author notes the family law system of the U.S. is broken mostly because litigation is highly preferred over other, more effective techniques of alternative dispute resolution. For this reason, the author delves into a comparative study of the U.S. system and others around the world, all in an effort to prove that collaborative law is the more favorable method.
{53} COLLABORATIVE LAW—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{124} COMPARISONS: CROSS-CULTURAL

Marsha B. Freeman, *Florida Collaborative Family Law: The Good, The Bad, and The (Hopefully) Getting Better*, 11 FLA. COASTAL L. REV. 237 (2010).
This article urges the use of collaborative law approaches in divorce cases. The author feels collaborative approaches, such as mediation (required in Florida in divorce cases), are best in divorce law. Collaborative processes, the author notes, allow people to preserve their dignity. Parties, attorneys, state and federal legislatures, as well as courts are beginning to recognize this principle, and the author hopes it will continue to persist in family law.
{53} COLLABORATIVE LAW—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Clark Freshman, *Yes, and: Core Concerns, Internal Mindfulness, and External Mindfulness for Emotional Balance, Lie Detection, and Successful Negotiation*, 10 NEV. L.J. 365 (2010).
The author argues the core concerns approach proffered by Leonard Riskin in *Further Beyond Reason: Emotions, the Core Concerns, And Mindfulness in Negotiation* may not work for individuals across the board. The author argues that differences between individuals may make the core concerns approach more or less effective. Additionally, the author evaluates Riskin's claims through scientific evidence and concludes the evidence does not support Riskin's claims. The author then introduces an "external mindfulness" approach, which is an extension of Riskin's ideas.
{1} NEGOTIATION—GENERAL
{73} SUBJ MATTER: GENERAL
{124} COMPARISONS: CROSS-CULTURAL

R. Wilson Freyermuth, *Foreclosure by Arbitration?*, 37 PEPP. L. REV. 459 (2010).
This author explores the role that alternative dispute resolution should play in the recent wave of mortgage foreclosures. Specifically, the author analyzes why potentially beneficial foreclosure-by-arbitration clauses have not

become customary. The article compares foreclosures administered through arbitration to judicial foreclosures and argues no legal barriers exist to prevent the use of arbitration.
{44} ARBITRATION—GENERAL
{79} SUBJ MATTER: CONSUMER

Matthew S. Furman, *How Chapter 93A Consumers Lost Their Day in Court: One Legislative Option to Level the Playing Field*, 15 SUFFOLK J. TRIAL & APP. ADVOC. 107 (2010).
This note discusses the tension between Chapter 93A of the Massachusetts Consumer Protection act and the Federal Arbitration Act. The FAA requires judges to stay any judicial proceedings in the face of a valid arbitration agreement. The author argues this allows businesses to circumvent state consumer protection laws, and can be rectified with the passage of the Arbitration Fairness Act of 2009, rendering arbitration agreements unenforceable in the consumer protection context.
{44} ARBITRATION—GENERAL
{79} SUBJ MATTER: CONSUMER
{144} LEGISLATION

Marc Galanter, *Access to Justice in a World of Expanding Social Capability*, 37 FORDHAM URB. L.J. 115 (2010).
Access to Justice (ATJ) was a 1970s phrase that signified the ability to avail oneself of the various institutions in which a claimant might pursue justice. ADR was also "born" in the 1970s and was initially virtually indistinguishable from ATJ. The author notes ADR has become an object of suspicion, and in some cases, a direct rival to ATJ programs, which are meant to focus on unmet legal needs.
{60} ADR—GENERAL
{73} SUBJ MATTER: GENERAL

Sarah E. Galbraith, *Second Life Strife: A Proposal for Resolution of In-World Fashion Disputes*, 2008 B.C. INTELL. PROP. & TECH. F. 090803 (2010).
Second Life is a virtual design world. This article focuses on the fashion creation in Second Life and the implementation of dispute resolution to halt trademark violations. The use of dispute resolution methods used for fashion-related disputes can be used as a springboard to design similar systems for a number of other conflicts, in the virtual world and in the real world.
{60} ADR—GENERAL
{78} SUBJ MATTER: COMPUTER

Lindsee Gendron & Peter M. Hoffman, *Judicial Review of Arbitration Awards After Cable Connection: Towards a Due Process Model*, 17 UCLA ENT. L. REV. 1 (2010).
This article argues against judicial enforcement of awards that delegate to arbitrators the power to grant remedies that are not authorized at law or violate fundamental due process and equal protection rights, absent specific and fully-informed waivers at the time of the arbitration agreement. This article suggests the Supreme Court take the opportunity to reject the vague and confusing "manifest disregard of the law" standard for vacatur in federal courts in favor of a clear standard delineating which public policies an arbitrator must follow at the risk of vacatur. However, limited intervention by the courts is critical to the avoidance of serious injustice.
{44} ARBITRATION—GENERAL
{73} SUBJ MATTER: GENERAL
{102} SUBJ MATTER: PUBLIC POLICY

B. Glenn George, *Justice in Simplicity: Perspectives on Knowledge and Access in American Employment Law*, 19 KAN. J.L. & PUB. POL'Y 383 (2010).
This article provides an overview of the complexity of American employment rights, including the use and enforcement of arbitration agreements by employers. The article discusses China's recent innovations in providing greater legal protection in the employment arena to its citizens. The last section considers the possibility of a more streamlined legal system or clearinghouse to assist employees in pursuing their rights in the U.S.
{44} ARBITRATION—GENERAL
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

Kenneth P. Gerber, *Legal Repair: Adjusters at the Table*, 47 AZ ATTORNEY 14 (2010).
In a brief article, the author examines Arizona's mandatory arbitration requirement for claims of less than $50,000, arguing the current system is tilted in favor of large insurance companies, which often appeal unfavorable arbitration decisions. The author concludes justice would better be served by a mandatory presence of insurance claims adjusters at arbitration settings.
{44} ARBITRATION—GENERAL
{91} SUBJ MATTER: INSURANCE
{110} SUBJ MATTER: TORTS

Christopher Gibson, *A Look at the Compulsory License in Investment Arbitration: The Case of Indirect Expropriation*, 25 AM. U. INT'L. L. REV. 357 (2010).
Nations have a long history of recognizing intellectual property rights in bilateral investment treaties (BITs), yet there has been no reported decision on an intellectual property centered investment dispute. The author examines why this may soon change, analyzing whether a compulsory license may constitute an indirect expropriation under BITs and other international investment agreements.
{44} ARBITRATION—GENERAL
{75} SUBJ MATTER: COMMERCIAL

Ronald J. Gilson, Charles F. Sabel & Robert E. Scott, *Braiding: The Interaction of Formal and Informal Contracting in Theory, Practice, and Doctrine*, 110 COLUM. L. REV. 1377 (2010).
The authors contend the blending of formal elements, such as arbitration, and informal elements encourages trust between parties to a contract. Arbitration, as a formal instrument, requires the intervention of the state to enforce awards. The article cites the Pharma/BMS Agreement, to say that if CEOs fail to solve disputes, ongoing disputes are first subject to mediation under the American Arbitration Association rules prior to binding arbitration.
{44} ARBITRATION—GENERAL
{81} SUBJ MATTER: CORPORATE
{136} ECONOMIC ADVANTAGES OF ADR

Tom Ginsburg, *The Arbitrator as Agent: Why Deferential Review is Not Always Pro-Arbitration*, 77 U. CHI. L. REV. 1013 (2010).
This essay examines the current standard of review for arbitration decisions from a principal-agent perspective. The author claims the optimal level of review is higher than deferential review because an arbitrator who is a faithful agent will less likely be overturned in court. This fear of being overturned will keep less experienced arbitrators out of the system. So a more rigorous standard of review will lead to better decision-making.
{44} ARBITRATION—GENERAL
{73}SUBJ MATTER: GENERAL

Robin Gise et al., *Mediation Starts From The First Phone Call—Practice Pointers and Helpful Hints for Lawyers Going to Mediation*, 11 CARDOZO J. CONFLICT RESOL. 463 (2010).
Mediation is a complicated process that begins much earlier than most lawyers expect. In today's world, practitioners must be ready to form

successful relationships from the very start in order to guarantee satisfactory results. In this article, the authors go through the entire mediation process and give helpful advice as to how to handle difficulties along the way.
{21} MEDIATION—GENERAL
{73} SUBJ MATTER: GENERAL
{151} ROLE OF LAWYERS

Elliot Glusker, *Arbitration Hurdles Facing Foreign Investors in Russia: Analysis of Present Issues and Implications*, 10 PEPP. DISP. RESOL. L.J. 595 (2010).
This article examines (1) the effectiveness of the Russian arbitration system, (2) the enforcement of foreign arbitration awards in Russia, and finally (3) the issues investors are likely to face when arbitrating claims against the Russian state. Russia's legacy of corruption imposes unique challenges to foreign investors and overshadows the state's arbitration system. In light of its legacy, the article analyzes whether arbitration is an effective and reliable means of dispute resolution for foreign investors in Russia.
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L

Kathleen Goodrich & Andrea Kupfer Schneider, *The Classroom Can Be All Fun & Games*, 25 OHIO ST. J. ON DISP. RESOL. 87 (2010).
This article explains how the video game, PeaceMaker, a simulation of the Palestinian-Israeli conflict, can be used to teach alternative dispute resolution concepts and methods. Specifically, the authors explain how the simulation allows students to gain hands-on experience with alternative dispute resolution within the context of an international conflict.
{60} ADR—GENERAL
{83} SUBJ MATTER: EDUCATION
{155} TEACHING

Maggie T. Grace, *Criminal Alternative Dispute Resolution: Restoring Justice, Respecting Responsibility, and Renewing Public Norms*, 34 VT. L. REV. 563 (2010).
The author suggests ADR processes remove legal conflicts from the courts with the general goal of benefitting all parties, reducing litigation costs and delays, and preventing subsequent legal disputes. The author argues a restorative justice lens reveals ADR can address realities of social foundations of crime while respecting deeply-held commitments to personal responsibility and public norms. She further argues ADR procedures

rehabilitate offenders, who will benefit from the intervention and become assets to society, while respecting responsibility and renewing public norms.
{60} ADR—GENERAL
{82} SUBJ MATTER: CRIMINAL
{102} SUBJ MATTER: PUBLIC POLICY

Anthony P. Greco, *ADR and a Smile: Neocolonialism and the West's Newest Export in Africa*, 10 PEPP. DISP. RESOL. L.J. 649 (2010).
The author advocates using mediation to supplement the local courts in Africa and thus provide access for African nations to the global market. This article addresses the hesitancy of many African nations to institute alternative dispute resolution process due to their belief that the processes reflect neocolonialism concepts. The author views alternative dispute resolution as a means of harmonizing local culture and reliable dispute resolution processes.
{21}MEDIATION—GENERAL
{92} SUBJ MATTER: INT'L

Arthur F. Greenbaum, *Multijurisdictional Practice and The Influence of Model Rule of Professional Conduct 5.5 – An Interim Assessment*, 43 AKRON L. REV. 729 (2010).
This article explores the impact of Rule 5.5 on the states. This rule deals with the law of multijurisdictional practice in the states by lawyers licensed in the U.S. who are not working in-house. There is some divergence in the states regarding the practice of ADR. However, the divergence is not significant because many states have catch-all provisions (and other safeguards) to allow attorneys to conduct ADR proceedings.
{60} ADR—GENERAL
{73} SUBJ MATTER: GENERAL

Elayne E. Greenberg, *Beyond the Polemics: Realistic Options to Help Divorcing Families Manage Domestic Violence*, 24 ST. JOHN'S J.L. COMM. 603 (2010).
This article argues the traditional judicial fault-finding approach to domestic violence fails to provide adequate support for families of domestic violence and instead encourages courts to employ alternative dispute resolution techniques such as mediation, parent education, and parent coordination. The article notes that often families victimized by domestic violence have been ineligible for ADR techniques due to protection and safety concerns. The author rejects such concerns and argues courts adopting a fault-finding approach have failed to adequately protect survivors of domestic violence.
{21} MEDIATION—GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Elayne E. Greenberg, *Perspective: Fine Tuning the Branding of Parenting Coordination: ". . . You may get what you Need,"* 48 FAM. CT. REV 206 (2010).
The author discusses the value of parenting coordination as a child-focused alternative dispute resolution process and calls for the profession to create a more cohesive message of what parent coordinators (PCs) do. The author asserts a cohesive message is important because the way in which parents and others view PCs will directly affect how PCs are used. In particular, the author suggests branding parenting coordination to unify divergent expectations and practices of parenting coordination.
{53} COLLABORATIVE LAW—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{149} QUALITY CONTROL

David L. Gregory & Edward McNamara, *Mandatory Labor Arbitration of Statutory Claims, and the Future of Fair Employment:* 14 Penn Plaza v. Pyett, 19 CORNELL J.L. & PUB. POL'Y 429 (2010).
In *14 Penn Plaza v. Pyett*, the Supreme Court endorsed mandatory labor arbitration rather than litigation to resolve statutory claims of unlawful age-based employment discrimination brought by employees represented by labor unions. The authors argue this may revitalize dormant legislative initiatives such as the Arbitration Fairness Act of 2009. The Act would render unenforceable agreements to arbitrate entered into before a dispute and require courts to determine the enforceability of arbitration agreements.
{44} ARBITRATION—GENERAL
{95} SUBJ MATTER: LABOR-MANAGEMENT (UNION)
{127} REQUIREMENTS: MANDATE TO USE

Jill I. Gross, *The End of Mandatory Securities Arbitration?*, 30 PACE L. REV. 1174 (2010).
This article examines the current state of mandatory securities arbitration, as well as several options for possible reforms that could be made by Congress and the SEC. The author argues despite popular sentiment in culture and the media calling for external reforms of policy, the appropriate means to move toward the end of mandatory securities arbitration is through gradual internal reforms of SEC regulatory oversight.
{44}ARBITRATION—GENERAL
{102}SUBJ MATTER: PUBLIC POLICY
{106}SUBJ MATTER: SECURITIES

Amos N. Guiora, *Negotiating Implementation of a Peace Agreement: Lessons Learned from Five Years at the Negotiation Table*, 11 CARDOZO J. CONFLICT RESOL. 411 (2010).
The author worked as the Judge Advocate General Corps Legal Advisor to the Israel Defense Forces Commander on the Gaza Strip for the period of 1994-1999. This article documents his work at the negotiation table during this time and specifically focuses on the lessons learned from that time period. The piece is meant to help international peace negotiators put together the best process possible going forward.
{1} NEGOTIATION—GENERAL
{92} SUBJ MATTER: INT'L
{137} EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES

Bobby Guy, *A Retrospective on PhyAmerica: It's Not Over When It's Over*, 29-2 AM. BANKR. INST. J. 14 (2010).
PhyAmerica put forward a voluntary ADR procedure to allow plaintiffs to go to mediation. The procedure allowed plaintiffs to opt out and pursue third parties without filing a claim. Many plaintiffs did not file claims so PhyAmerica proposed a "channeling injunction" as part of its chapter 11 plan. PhyAmerica proposed a new mandatory ADR procedure, which would not allow plaintiffs to sue doctors and hospitals directly.
{60} ADR—GENERAL
{74.5} SUBJ MATTER: BANKRUPTCY
{89} SUBJ MATTER: HOSPITALS

Jeffrey Haberman, Note, *Child Custody: Don't Worry, A Bet Din Can Get It Right*, 11 CARDOZO J. CONFLICT RESOL. 613 (2010).
In Hasidic Judaic communities, the "a bet din" (house of judgment) arbitral tribunals are heavily favored to resolve familial disputes. The author supports this practice and proposes arbitration by a bet din is favorable over more adversarial methods. Additionally, the note argues the tribunals are most effective in giving great weight to the best interest of the children at the heart of the dispute.
{44} ARBITRATION—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{133} COURT REFORMS

Drake Hagner, Note, *Fighting for our Lives: The D.C. Trans Coalition's Campaign for Humane Treatment of Transgender Inmates in District of Columbia Correctional Facilities*, 11 GEO. J. GENDER & L. 837 (2009).

This note describes a system of mutual law between the D.C. Trans Coalition and social justice lawyers to improve conditions for trans-gender residents who are arrested and detained in the District of Columbia. The author argues the strategies taken by the Coalition provide a model for lawyers who recognize a need to work collaboratively with communities, but sometimes overstep their bounds and disempower local leaders.
{60} ADR—GENERAL
{76} SUBJ MATTER: CIVIL RIGHTS
{151} ROLE OF LAWYERS

Victor Y. Haines III, Patrice Jalette & Karine Larose, *The Influence of Human Resource Management Practices on Employee Voluntary Turnover Rates in the Canadian Non Governmental Sector*, 63 IND. & LAB. REL. REV. 228 (2010).
This study analyzed thirteen human resource practices and how they affected turnover rates in the Canadian private sector. One of the practices analyzed was the existence of formal dispute resolution procedures at the workplace and whether they reduced turnover. The study found these formal procedures, as part of a more general way of giving employees a voice, were indicative of less turnover.
{60} ADR—GENERAL
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)
{134} DISPUTE PREVENTION

Sean M. Hardy, *A Fighting Chance: The Proposed Servicemembers Access to Justice Act & Its Potential Effects on Binding Arbitration Agreements*, 10 PEPP. DISP. RESOL. L.J. 329 (2010).
This article argues that, for the sake of treating veterans with decency and respect, the Servicemembers Access to Justice Act (SAJA) should be passed. The SAJA would change existing law to benefit veterans who are plaintiffs in civil suits, including precluding arbitration in certain circumstances and making injunctive relief easier to award. This article, though published in 2010, discusses the SAJA as proposed in August 2008.
{60}ADR—GENERAL
{102}SUBJ MATTER: PUBLIC POLICY
{144}LEGISLATION

David A. Harris, *Law Enforcement and Intelligence Gathering in Muslim and Immigrant Communities After 9/11*, 34 N.Y.U. REV. L. & SOC. CHANGE 123 (2010).

Since 9/11, the FBI has been partnering with Muslim communities to identify possible extremist activities. Concurrent with these efforts, the FBI uses undercover informants in the communities. If the undercover informant is exposed, tensions between the FBI and the community grow. This article explains how negotiated agreements on acceptable practices between the two sides will benefit both the Muslim community and law enforcement.
{1} NEGOTIATION—GENERAL
{87} SUBJ MATTER: GOV'T

Nicholas Hartigan, *Special Project: No One Leaves: Community Mobilization as a Response to the Foreclosure Crisis in Massachusetts*, 45 HARV. C.R.-C.L. L. REV. 181 (2010).
This article presents a case study of legal advocacy and grassroots activism that will address problems related to housing. The author argues communities need to be mobilized so disputes can avoid courtrooms. Based on his case study, the author proposes attorneys, law students, community organizers, and members of the community can work together to alleviate foreclosures and evictions. He focuses on the creation of a Foreclosure Taskforce.
{60} ADR—GENERAL
{77} SUBJ MATTER: COMMUNITY

Robert Hauser, Raymond Kramer III & Patricia Leonard, *Re-Examining the Presumption in Favor of Arbitration in Complex Commercial Cases*, 84 FLA. BAR J. 8 (2010).
Commercial arbitration and attendant litigation can take more overall time and expense than traditional litigation sought to be avoided in the first place. With arbitration, equitable relief may wrongfully be awarded or denied under an erroneous arbitration award, which cannot be corrected under existing law. Serious legal errors by arbitrators may be left alone even if extremely erroneous. The authors urge reconsidering public policy rationales which favor arbitration in complex commercial cases.
{44} ARBITRATION—GENERAL
{102} SUBJ MATTER: PUBLIC POLICY

Sherrill W. Hayes, *"More of Street Cop than a Detective": An Analysis of the Roles and Functions of Parenting Coordinators in North Carolina*, 48 FAM. CT. REV 698 (2010).
The author examines how parenting coordinators (PCs) in North Carolina view their roles and functions by conducting in-depth, vignette-based interviews with PCs. The author found that PCs prefer to manage and resolve disputes without creating new rules. The study also uncovered that PCs were

the least clear about their assessment/case management and decision making functions, which led to a low comfort in performing such tasks.
{60} ADR—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{146} ORGANIZATION POLICIES & RULES
{151} ROLE OF LAWYERS

Robert Heidt, *The Unappreciated Importance, For Small Business Defendants, of the Duty to Settle*, 62 ME. L. REV. 75 (2010).
This article discusses the duty to settle, its effects, and the reasons for and against. The author's hypothesis is the duty to settle has "indirectly led small business recreational vendors to eliminate or sanitize the activities they offer." Examples include horse-riding stables and motels with swimming pools. The author notes insurers pressure their insureds to "alter its activities so as to reduce the chance, for whatever reason, of a customer suffering a severe injury." This paper does not discuss whether the duty to settle optimally reduces what tort defendants pay to liability insurers or whether such a duty is "socially optimal" when considering the injured plaintiff.
{60} ADR—GENERAL
{75} SUBJ MATTER: COMMERCIAL

Codie Henderson, *The* Hall Street *Hangover: Recovering and Discovering Avenues for Review of Arbitration Awards;* Hall Street Assoc. v. Mattel, Inc., *128 S. Ct. 1396 (2008),* 10 WYO. L. REV. 299 (2010).
The author examines *Hall Street* noting the decision limiting expanded judicial review of arbitration awards was correct. The article claims that allowing expanded judicial review would place too much pressure on arbitrators and courts. The author states there are still grounds for review outside of the statutory grounds like manifest disregard. Additionally, the article suggests parties tailor agreements to allow review by an appeal panel to circumvent *Hall Street.*
{44} ARBITRATION—GENERAL
{73} SUBJECT MATTER: GENERAL
{122} ENFORCEMENT OF SETTLEMENT OR AWARD
{128} REQUIREMENTS: STATUTORY OR RULES

Laura Henry, *Investment Agreement Claims Under the 2004 Model U.S. BIT: A Challenge for State Police Powers?*, 31 U. PA. J. INT'L L. 935 (2010).
This article discusses the model Bilateral Investment Treaty (BIT) and its implications for investment treaty arbitration. After examining the BIT's consent clause in the context of transnational contract dispute resolution, the

author identifies potential conflicts between the BIT and domestic law, including the right of states to regulate. Ultimately, the author argues for a narrow interpretation of BIT to avoid these pitfalls.
{44}ARBITRATION—GENERAL
{75}SUBJ MATTER: COMMERCIAL
{92}SUBJ MATTER: INT'L
{134}DISPUTE PREVENTION

John W. Hill, Angela N. Aneiros & Paul Rayford Hogan, *Law and the Healthcare Crisis: The Impact of Medical Malpractice and Payment Systems on Physician Compensation and Workload as Antecedents of Physician Shortages – Analysis, Implications, and Reform Solutions*, 2010 U. ILL. J.L. TECH. & POL'Y 91 (2010).
As part of an overall framework for reducing medical malpractice costs as they relate to the crisis of physician shortages, the authors include a proposal for mandatory, non-binding mediation of medical malpractice suits. They conclude this would reduce lawsuits as well as help maintain physician-patient relationships and reduce emotional involvement in these disputes.
{21} MEDIATION—GENERAL
{98} SUBJ MATTER: MEDICAL MALPRACTICE
{134} DISPUTE PREVENTION

Jeffrey M. Hirsch, *Making Globalism Work for Employees*, 54 ST. LOUIS L.J. 427 (2010).
This article analyzes the negative impact globalization has had on workers' rights. The author argues collective bargaining strategies could overcome globalization's negative effects if workers are able to transcend borders cooperatively to pressure employers to adopt codes of conduct and other voluntary labor standard agreements. In addition, the author argues government action is necessary to secure basic labor standards.
{1} NEGOTIATION—GENERAL
{93} SUBJ MATTER: LABOR-GENERAL

Amy Holtzworth-Munroe, Connie J. A. Beck & Amy G. Applegate, *The Mediator's assessment of Safety Issues and Concerns (MASIC): A Screening Interview for Intimate Partner Violence and Abuse Available in the Public Domain*, 48 FAM. CT. REV 646 (2010).
The authors conducted a study to determine the mediator's ability to identify partner violence and/or abuse (IPV/A). Based on the study, the Authors assert that mediators tend to underestimate the prevalence of IPV/A unless the mediators adopt a standard screening method for identifying IPV/A

before mediations begin. In particular, the authors promote the Mediator's Assessment of Safety Issues and Concerns, a measure used to analyze various types of abuse.
{21} MEDIATION—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{147} POWER IMBALANCE
{149} QUALITY CONTROL

James E. Hopenfeld, *A Proposal for a 'Good-Faith Offer' Standard for Evaluating Allegations of Willful Infringement – with Thanks to Major League Baseball*, 20 FED. CIRCUIT B.J. 5 (2010).
The author addresses a need to adopt new arbitration measures in willful patent infringement cases. Although willful patent infringement enforcement has changed because of *Seagate* and the Patent Reform Act, the changes have not adequately encouraged settlement of patent disputes. The author proposes adopting Major League Baseball's "last-best offer" arbitration scheme. This would move courts away from the analyzing difficult to apply standards.
{44} ARBITRATION—GENERAL
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Jay Horowitz, *Rule 68: The Settlement Promotion Tool That Has Not Promoted Settlements*, 87 DENV. U. L. REV. 485 (2010).
The sole purpose of Rule 68 is to serve the function of settlement promotion, and refers on its face only to costs and not to attorney's fees. The Court has not assigned federal courts a direct role in the settlement process, unlike Rule 16, which empowers federal courts to send parties to mediation. The author contends the Court is failing to utilize attorneys, specially trained in ADR, as facilitators in settlement disputes.
{21} MEDIATION—GENERAL
{102} SUBJ MATTER: PUBLIC POLICY
{121} SETTLEMENT: AUTHORITY

David Horton, *Essay: The Mandatory Core of Section 4 of the Federal Arbitration Act*, 96 VA. L. REV. In Brief 1 (2010).
This short essay argues that courts, not arbitrators, have the exclusive power to determine whether an arbitration clause is invalid under traditional contract defenses. The source of the judiciary's monopoly is section 4 of the Federal Arbitration Act, which mandates that any time the "making of the agreement to arbitrate" is "in issue," a judge must resolve the matter.
{44} ARBITRATION—GENERAL
{144} LEGISLATION

Dennis J. Hough, Jr., *World Trade Organization Agreements and Principles as a Vehicle for the Attainment of Energy Security*, 9 RICH. J. GLOBAL L. & BUS. 199 (2010).
This article advocates opening up the energy and energy services trade to the WTO in order to fulfill energy needs of all developing countries. The author argues the WTO's legal framework is necessary to achieve energy security. The article also provides background information on WTO energy negotiations and the organization's governing energy laws.
{60} ADR—GENERAL
{92} SUBJ MATTER: INT'L

Olivia D. Howe, *Update: Recent Developments in NAFTA,* 16 LAW & BUS. REV. AM. 137 (2010).
This update discusses how a NAFTA arbitration panel reached an important decision to dismiss a Canadian company's claim against the U.S.; the panel's decision is significant because it serves as an indication that global investment and environmental protection interests can co-exist.
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L

Patrick R. Hugg, *Accession Aspirations Degenerate: A New Chapter for Turkey and the EU*, 9 WASH. U. GLOBAL STUD. L. REV. 225 (2010).
This article examines the apprehension to Turkey's accession in to the European Union. Since the EU opened negotiations in 2004, the member states have used their negotiation veto at an unprecedented rate. Turkey faces constant obstacles in their negotiations. The EU has been unable to control the strong political forces against these negotiations and with the complicated process of EU accession, there is a large potential for obstruction.
{1} NEGOTIATION—GENERAL
{92} SUBJ MATTER: INT'L

David Hunter, *Implications of the Copenhagen Accord for Global Climate Governance*, 10 SUSTAINABLE DEV. L. & POL'Y 4 (2010).
This note criticizes the recent Copenhagen Accord, discussing how the participating nations were unwilling to compromise and instead announced their own modest proposals for the reduction of harmful carbon emissions, and failing to come together to reduce emissions in a meaningful way. The author asserts the accord rejects a universal, negotiated science-driven approach to reduction, and instead gives countries too much autonomy to act individually in establishing reduction timetables.
{1} NEGOTIATION—GENERAL

{84} SUBJ MATTER: ENVIRONMENT
{92} SUBJ MATTER: INT'L

Richard L. Hurford, *Alternative Dispute Resolution: The Business Case for SMART™ Dispute Resolution Processes,* 89 MICH. BAR J. 42 (2010).
This article looks at SMART™ dispute resolution systems. SMART™ dispute resolutions are strategic, measurable, appropriate, and teachable, and generate a significantly enhanced return on investment. SMART™ dispute resolution mechanisms enable business and their counselors to reduce costs, decrease the risk profile of the enterprise, and increase loyalty among key stakeholders. The author explores attributes of SMART™ dispute systems and potential alternatives to the traditional litigation model.
{60} ADR—GENERAL
{73} SUBJ MATTER: GENERAL
{81} SUBJ MATTER: CORPORATE
{136} ECONOMIC ADVANTAGES OF ADR

Ashton B. Inniss, Note, *Rethinking Political Risk Insurance: Incentives for Investor Risk Mitigation*, 16 SW. J. INT'L L. 477 (2010).
This note discusses how the use of arbitration, among other potential remedies, is an inadequate guard against the political risk that comes with investing in developing nations. The note argues that when two nations or investors agree to arbitration, whichever nation plays host to the agreement is likely to gain an unfair advantage. Arbitration can be time consuming and costly, harming the investors' overall profit.
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L

Becky L. Jacobs, *Often Wrong, Never In Doubt: How Anti-Arbitration Expectancy Bias May Limit Access to Justice*, 62 ME. L. REV. 531 (2010).
This article asks whether popular beliefs about arbitration, accurate or not, are preventing those who need arbitration most from seeking it out for legal relief. The author discusses the public's negative view of arbitration and its perception of arbitration as an unfair process. The author (and those cited) notes plaintiffs with small claims may find it difficult or not cost-effective to locate counsel willing to represent them. And given the public's negative perception, these plaintiffs will not submit to arbitration, where their claim might have a good chance of success.
{44} ARBITRATION—GENERAL
{73} SUBJ MATTER: GENERAL

Cody Jacobs, Note, *Trade We Can Believe In: Renegotiating NAFTA's Labor Provisions to Create More Equitable Growth in North America*, 17 GEO. J. POVERTY LAW & POL'Y 127 (2010).
This note discusses the failures of the current labor protections in the North American Free Trade Agreement and how the failures have hurt the working poor. The author proposes ways to help spread NAFTA's benefits more equally. The article notes the history of NAFTA, including its labor "side agreement," and how that agreement has failed to provide adequate protection. The author argues for stronger labor protections and the creation of a development fund.
{1} NEGOTIATION—GENERAL
{93} SUBJ MATTER: LABOR—GENERAL
{125} COMPARISONS: HISTORICAL

Roger B. Jacobs, *Supreme Court Tips Against Individual Rights–Again*, 27 HOFSTRA LAB. & EMP. L.J. 267 (2010).
This article looks at the events leading up to and the subsequent impact of the recent Supreme Court decision in *14 Penn Plaza LLC v. Pyett*. In particular, the author examines individual rights of union members in the wake of the decision, and whether unions will now be required to arbitrate every discrimination claim in order to avoid lawsuits from their members.
{44} ARBITRATION—GENERAL
{95} SUBJ MATTER: LABOR-MANAGEMENT (UNION)
{126}REQUIREMENTS: CONTRACTUAL CLAUSES

Peter G. Jaffe, Dan Ashbourne & Alfred A. Mamo, *Early Identification and Prevention of Parent-Child Alienation: A Framework for Balancing Risks and Benefits of Intervention*, 48 FAM. CT. REV 136 (2010).
The author addresses how parent separation can affect a child's relationship with one or both parents. The paper asserts the justice system plays a critical role in screening and assessing alienation allegations. It recommends in certain situations, "appropriate" alternative dispute resolution should be implemented to protect the child and prevent disputes from escalating.
{60} ADR—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{134} DISPUTE PREVENTION

Jan Jeske, *Custody Mediation within the Context of Domestic Violence*, 31 HAMLINE J. PUB. L. & POL'Y 657 (2010).
This article argues for mandatory mediation education for victims of domestic violence so when going through divorce proceedings, the victims

can make informed choices about what is best for themselves and their children. With the advent of states legislating for mandatory divorce mediation, the author suggests this education will help avoid the gender imbalance that often comes into the mediation and protect at-risk victims.
{21} MEDIATION—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{133} COURT REFORMS

Susan T. Johnson, *First Contract Arbitration: Effects on Bargaining and Work Stoppages*, 63 IND. & LAB. REL. REV. 585 (2010).
After analyzing Canadian jurisdictions that employ first-contract arbitration (FCA) for new unions, the author finds although FCA is rarely used, it is associated with a high reduction of work stoppages. The author concludes FCA encourages collective bargaining and FCA has no statistically significant impact on the duration of first-agreement work stoppages.
{44} ARBITRATION—GENERAL
{95} SUBJ MATTER: LABOR-MANAGEMENT (UNION)
{136} ECONOMIC ADVANTAGES OF ADR

Charles B. Judson, *Alternative Dispute Resolution, Theme Introduction,* 89 MICH. BAR J. 21 (2010).
The author discusses the Alternative Dispute Resolution Section of the State Bar of Michigan and how alternative dispute resolution processes are offered as opportunities to resolve disputes and are often times more efficient than traditional litigation. The author also talks about the ADR Council and its responsibilities, along with an overall explanation of ADR tools available in Michigan for the resolution of conflicts.
{60} ADR—GENERAL
{73} SUBJ MATTER: GENERAL

Kevin F. Jursinski, *The Mortgage Foreclosure Crisis in Florida: A 21st Century Solution*, 84 FLA. B. J. 91 (2010).
The author proposes mandatory mediation and arbitration to respond to the backlog of Florida cases arising from the national mortgage foreclosure crisis. The cases have flooded Florida's court systems, lost state jobs, and decreased property value. To reduce the backlog, the author proposes a two-step solution: (1) require a uniform, nonbinding mediation (2) if unsuccessful, require borrower and lender to submit to binding arbitration. This would minimize damages and streamline the foreclosure process.
{21} MEDIATION—GENERAL
{79} SUBJ MATTER: CONSUMER

{128} REQUIREMENTS: STATUTORY OR RULES
{133} COURT REFORMS
{136} ECONOMIC ADVANTAGES OF ADR

Jordan C. Kahn, *Investment Protection under the Proposed ASEAN-United States Free Trade Agreement*, 33 SUFFOLK TRANSNAT'L L. REV. 225 (2010).
This note argues in support of mandatory arbitration within the Association of Southeastern Asian Nations (ASEAN)-United States Free Trade Agreement. The current system of dispute resolution includes a three-step process of mandatory consultation, issuance of panel reports, and appellate review. This process is non-binding. In order to entice foreign direct investment (FDI) into ASEAN, the author argues a binding arbitration agreement is necessary.
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L

Harold L. Kaplan & Andrew M. Troop, *Diagnosing Medical Malpractice Coverage and Treatment in Health Care Chapter 11s: Part II*, 29-7 AM. BANKR. INST. J. 16 (2010).
The authors argue handling medical malpractice claims invariably presents key and unique considerations in structuring any reorganization plan. Bankruptcy courts can require claimants to submit to ADR, which expedites the resolution of claims. Debtors benefit by avoiding substantial costs they would incur during litigation. The drawback to the ADR process is the expedited resolution could accelerate the timing of payments.
{60} ADR—GENERAL
{74.5} SUBJ MATTER: BANKRUPTCY

Deborah Karakowsky, *Resolving the Conflict: The Federal Arbitration Act Versus the Bankruptcy Code*, 47 HOUSTON LAWYER 34 (2010).
Although the FAA requires enforcement of valid arbitration clauses, the Bankruptcy Code gives judges wider latitude to stay certain actions against the debtor. This Article examines the collision between these two aspects of federal law, the development of how courts have handled this collision, and concludes it is likely that under current law a bankruptcy judge lacks authority to stay otherwise valid arbitration procedures. However, some substantive issues "core" to bankruptcy policy may not be waived.
{44} ARBITRATION—GENERAL
{74.5} SUBJ MATTER: BANKRUPTCY
{126}REQUIREMENTS: CONTRACTUAL CLAUSES

Saiful Karim, *Environmental Pollution from the Shipbreaking Industry: International Law and National Legal Response*, 22 GEO. INT'L ENVTL. L. REV. 185 (2010).
This note addresses the international legal regime on shipbreaking, which is partially regulated by international law. The Basel Convention currently regulates the transboundary movement of hazardous wastes and their environmentally sound disposal. This article talks about negotiations through the Convention on unresolved issues like pre-cleaning and Gas-Free-for-Hot-Work Certificates, noting the politics involved and the difficulty of negotiations due to representatives from developed countries, developing countries, environmentalist organizations, and shipping companies.
{1} NEGOTIATION—GENERAL
{92} SUBJ MATTER: INT'L

Jillian Kasow, *New York's Court of Appeals: Judge Carmen Beauchamp Ciparick: A Glimpse Into the Senior Associate Judge's Judicial Philosophy Through Her Dissents*, 73 ALB. L. REV. 953 (2010).
This article looks at the judicial philosophy and principles behind Ciparick's liberal views on New York State's highest bench. One section explores her rulings on institutional mechanisms such as arbitration. In one dissent, Ciparick would have vacated the arbitration ruling against a discharged employee because the finality of arbitral awards cannot be procured at the expense of fair representation. Ciparick wants to expand municipal workers rights by preserving remedy options.
{44} ARBITRATION—GENERAL
{102} SUBJ MATTER—PUBLIC POLICY

Harpreet Kaur, Note, *The 1996 Arbitration and Conciliation Act: A Step Toward Improving Arbitration in India*, 6 HASTINGS BUS. L.J. 261 (2010).
This note asserts the 1996 Arbitration and Conciliation Act vastly improved the arbitration process in India by minimizing judicial intervention. It also claims permitting institutional arbitration has increased participant and attorney confidence in the process. The note further asserts arbitration can be improved by maximizing the role of the arbitral tribunal in the process.
{44} ARBITRATION—GENERAL
{92} SUB MATTER: INT'L

E.E. Keenan, *Collectively Bargained Employment Arbitration:* 14 Penn Plaza LLC v. Pyett, 15 HARV. NEGOT. L. REV. 261 (2010).
This article criticizes the Supreme Court's holding in *Pyett* as a dramatic departure from stare decisis. It asserts the Court should have acknowledged

the precedent set by the *Gardner-Denver* case, which barred enforcement of collectively-bargained arbitration clauses. The article also asserts the Court should have explicitly overruled *Gardner-Denver* while considering subsequent developments in the law of arbitration.
{44} ARBITRATION—GENERAL
{95} SUBJ MATTER: LABOR – MANAGEMENT (UNION)

Allison Keffer, *Dueling Provisions of the Civil Service Act and Collective Bargaining Agreement—Which Takes Priority when Calculating Seniority? An Analysis of* Pennsylvania State Corrections Officers Ass'n v. State Civil Service Commission, 19 WIDENER L.J. 519 (2010).
This article examines *Pennsylvania State Corrections Officers Ass'n v. State Civil Service Commission*, where the State Civil Service Act conflicted with the collective bargaining agreement over seniority rights. The Pennsylvania Supreme Court held if the collective bargaining agreement conflicts with the statute, the statute will prevail. This decision went against previous case law emphasizing free negotiation absent an express prohibition in a statute.
{1} NEGOTIATION—GENERAL
{95} SUBJ MATTER: LABOR-MANAGEMENT (UNION)

Bernard J. Kelley & Amelia R. Hahn, *Recent Case Law Developments Relating to Delaware's Alternative Entities*, 11 DEL. L. REV. 149 (2010).
The article examines recent development in Delaware case law. One recent development is in the arbitrability of claims. In *Julian v. Julian*, the Delaware Court of Chancery found the question of whether the parties agreed to arbitrate is generally one for the courts to decide and not for arbitrators, and courts should presume against arbitration unless there is clear and unmistakable evidence the parties intended to arbitrate disputes.
{44} ARBITRATION—GENERAL
{102} SUBJ MATTER: PUBLIC POLICY
{127} REQUIREMENTS: MANDATE TO USE

Catherine Y. Kim, *Procedures for Public Law Remediation in School-to-Prison Pipeline Litigation: Lessons Learned from* Antoine v. Winner School District, 54 N.Y.L. SCH. L. REV. 955 (2010).
In Winner School District, American Indians were punished more harshly than white students. The Sioux Tribe sued the school district, and the parties agreed to submit to mediation before a federal magistrate. This article analyzes the effectiveness of emphasizing direct participation of the parties, not attorneys, in the mediation. Each side had an equal voice in the mediation. The two sides ultimately came to an agreement.

{21} MEDIATION—GENERAL
{76} SUBJ MATTER: CIVIL RIGHTS
{83} SUBJ MATTER: EDUCATION

Nancy S. Kim & Chii-Dean Lin, *Arbitration's Summer Soldiers Marching into Fall: Another Look at Eisenberg, Miller and Sherwin's Empirical Study of Arbitration Clauses in Consumer and Nonconsumer Contracts*, 34 VT. L. REV. 597 (2010).
This is an empirical study examining the role and importance of arbitration clauses in standard form contracts, primarily with other businesses. The study finds many businesses employ mandatory arbitration clauses in their customer contracts with other businesses. It also suggests the primary reason for mandatory arbitration clauses in customer contracts where the customer is a business is the avoidance of expenses associated with litigation. This study may help companies better understand attitudes about arbitration and assist in contract negotiations and may also help courts determine whether arbitration clauses in merchant form agreement—and changes to those clauses—are "material" under section 2-207(2) of the Uniform Commercial Code.
{44} ARBITRATION—GENERAL
{73} SUBJ MATTER: GENERAL
{75} SUBJ MATTER: COMMERCIAL

Daniel B. Klaff, *Debiasing and Bidirectional Bias: Cognitive Failure in Mandatory Employment Arbitration*, 15 HARV. NEGOT. L. REV. 1 (2010).
This article examines the effect of cognitive biases on employees' decisions to accept mandatory arbitration agreements. The article argues some biases prompt employees to reject mandatory arbitration agreements when it would be rational to accept them. The article posits new empirical data is necessary to further explore the issue, in light of the complexity of cognitive biases and a lack of understanding regarding effect on employees' decisions to arbitrate.
{45} ARB: MANDATORY—GENERAL
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)
{127} REQUIREMENTS: MANDATE TO USE

Christina Knahr, Micula v. Romania, 104 AM. J. INT'L. L. 81 (2010).
This article analyzes *Micula v. Romania*, in which two former Romanian citizens sought relief against their nation of origin from an arbitral tribunal, after Romania changed provisions of a bilateral investment treaty with Sweden as a condition of joining the European Union. The case raises the question whether investment tribunals should be allowed to order states to amend their laws in ways that would violate their international obligations.

{44} ARBITRATION—GENERAL
{75} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L

Erik Knutsen, *Keeping Settlements Secret*, 37 FLA. ST. U.L. REV. 945 (2010).
This article explores the current debate whether the public civil justice system can and should tolerate secret settlements during litigation. The author states there should be no ban, because banning secret settlements will have no real effect as parties will just work around the ban. Parties will opt into various forms of ADR, where the ban may not apply.
{60} ADR—GENERAL
{73} SUBJ MATTER: GENERAL

Katrina S. Knutson, *Lead in their Shoes?: The Impact of the Consumer Product Safety Improvement Act on Chinese/American Trade Negotiations*, 31 HAMLINE J. PUB. L. & POL'Y 705 (2010).
This article discusses the international regulations on consumer goods and how product safety can be improved if several different parties—governments, businesses and regulatory agencies—cooperate. Increased trade negotiations between the U.S. and China should be followed by new strategies in consumer goods production, including considering quality over quantity and reevaluate how consumers' spending habits have changed. The author suggests combining strategies to make sure trade between the countries remains viable.
{1} NEGOTIATION—GENERAL
{92} SUBJ MATTER: INT'L
{104} SUBJ MATTER: REGULATORY

Thomas Kochan et al., *The Long Haul Effects of New York State's Taylor Law*, 63 INDUS. & LAB. REL. REV. 565 (2010).
After examining the effects of mandatory interest arbitration for police and firefighters in New York, the authors found reliance on arbitration decreased, the effectiveness of mediation stayed high, and negotiated wage outcomes matched those of arbitration awards. In addition, there were no strikes between 1995 and 2007 under arbitration. As a result, the authors propose increasing the role for interest arbitration in national labor law.
{44} ARBITRATION—GENERAL
{95} SUBJ MATTER: LABOR-MANAGEMENT (UNION)
{136} ECONOMIC ADVANTAGES OF ADR

Laurie S. Kohn, *What's So Funny About Peace, Love, and Understanding? Restorative Justice as a New Paradigm for Domestic Violence Intervention*, 40 SETON HALL L. REV. 517 (2010).
To address concerns that current domestic violence intervention tends to leave victims unsafe and dissatisfied, this article suggests incorporating methods of restorative justice, particularly family group conferences. Recently developed programs in South Africa and New Zealand report encouraging results. The author emphasizes eight key components to structuring these conferences, which would complement the current justice system, still incorporating courts to strengthen enforceability.
{21} MEDIATION—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Arthur B. Laby, *Fiduciary Obligations of Broker-Dealers and Investment Advisers*, 55 VILL. L. REV. 701 (2010).
This article analyzes the role of two types of investment professionals who dispense advice: broker-dealers and investment advisers. Courts disagree over the fiduciary obligations of broker-dealers because brokerage disputes are usually handled through arbitration. Without many litigated cases, this lack of written decisions creates confusion. If required to prepare a written decision, arbitrators presumably would follow a body of past decisions, and there would be less confusion over the standard.
{44} ARBITRATION—GENERAL
{106} SUBJ MATTER: SECURITIES

Raymond J. LaJeunesse, Jr., *The Controversial "Card-Check" Bill, Stalled in the United States Congress, Presents Serious Legal and Policy Issues*, 14 TEX. REV. L. & POL. 209 (2010).
The author discusses the Employee Free Choice Act of 2009's three major provisions, including "card check," compulsory interest arbitration, and increased penalties for unfair labor practices. The author argues the compulsory interest arbitration clause is most likely unconstitutional because it is a taking by the government for a non-public use if the arbitrator rules against employer. The clause also does not impose any limits to the arbitrator's powers.
{44} ARBITRATION—GENERAL
{95} SUBJ MATTER: LABOR-MANAGEMENT (UNION)
{144} LEGISLATION

John Lande & Forrest S. Mosten, *Collaborative Lawyers' Duties to Screen the Appropriateness of Collaborative Law and Obtain Clients' Informed*

Consent to Use Collaborative Law, 25 OHIO ST. J. ON DISP. RESOL. 347 (2010).
This article discusses Collaborative Law (CL) as a means of resolving disputes. In particular, the authors focus on the risks and benefits of using CL. The authors assert when advising clients about the possibility of using CL, lawyers have an obligation to provide information to clients, screen cases to assess whether their case is appropriate, and obtain their clients' informed consent to use the process. This article systematically analyzes these obligations and attempts to educate CL lawyers about how to fulfill their obligations.
{53} COLLABORATIVE LAW—GENERAL
{83} SUBJ MATTER: EDUCATION
{151} ROLE OF LAWYERS

John Lande & Jean R. Sternlight, *The Potential Contribution of ADR to an Integrated Curriculum: Preparing Law Students for Real World Lawyering*, 25 OHIO ST. J. ON DISP. RESOL. 247 (2010).
The authors reach three primary conclusions regarding how ADR faculty and instruction can help law students become better lawyers: 1) law schools ought to provide students with more ADR instruction, 2) law schools should integrate ADR instruction throughout the curriculum, and 3) a major purpose of ADR education ought to be to help students be better lawyers for their clients. In reaching these conclusions, the authors analyze problems with the current state of legal education and provide insight into how ADR can improve legal education from a practical perspective.
{60} ADR—GENERAL
{83} SUBJ MATTER: EDUCATION
{155} TEACHING

Stephan Landsman, *Nothing for Something? Denying Legal Assistance to Those Compelled to Participate in ADR Proceedings*, 37 FORDHAM URB. L.J. 273 (2010).
This article explores the treatment of unrepresented litigants in ADR settings in which they are compelled to participate. The author notes that pro se parties fare badly in ADR settings and notes that compelling the unrepresented to participate in arbitrations or court-annexed mediations poses clear risks, risks that need to be addressed either by busy courts or by reliance on the provision of counsel to the disadvantaged.
{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{73} SUBJ MATTER: GENERAL

Charlee Lane, *For Heaven's Sake, Give the Child a Voice: An ADR Approach to Interfaith Child Custody Disputes*, 10 PEPP. DISP. RESOL. L.J. 623 (2010).
Custody dispute battles over a child pose a unique challenge when the parents subscribe to different religions. The author advocates children's' rights, not those of the parents, take highest priority, however, a successful custody negotiation incorporates both the needs of the child and the parents. It falls on the mediator to assess the potential amount of harm posed to the child before proceeding to the facilitative stage.
{21} MEDIATION—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

David Allen Larson, *Artificial Intelligence: Robots, Avatars, and the Demise of the Human Mediator*, 25 OHIO ST. J. ON DISP. RESOL. 105 (2010).
This article examines whether artificial intelligence devices can be used to resolve disputes. The author focuses primarily on robots designed to resemble humans and avatars. The author addresses possible roles artificial intelligence devices could play in dispute resolution.
{60} ADR—GENERAL
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Coalter G. Lathrop, Government of Sudan v. Sudan People's Liberation Army *("Abyei Arbitration")*, 104 AM. J. INT'L. L. 66 (2010).
The article reviews the arbitral tribunal's finding the Abyei Boundaries Commission had exceeded its mandate in delimiting the area of southern Sudan known as the Abyei Area, which is at the geographic center of the country's civil unrest, and decision to redraw the boundaries of the disputed region, which is anticipated to vote soon on whether to become part of northern or southern Sudan.
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L

Michelle LeBaron & Mario Patera, *Reflective Practice in the New Millennium*, 31 HAMLINE J. PUB. L. & POL'Y 405 (2010).
In this article, the authors reflect on the pedagogical approaches used at the 2008 Rome negotiation conference and propose a protean approach for negotiation education. The authors argue the methods of the conference negotiation trainers were influenced by of the use of American-based fact patterns, and propose alternative training tactics that would better reflect the worldview of the participants and have positive implications upon delivery.
{1} NEGOTIATION—GENERAL

{83} SUBJ MATTER: EDUCATION
{124} CROSS-CULTURAL

Gerald Lebovits & Lucero Ramirez Hidalgo, *Alternative Dispute Resolution in Real Estate Matters: The New York Experience*, 11 CARDOZO J. CONFLICT RESOL. 437 (2010).
With foreclosures increasing in volume across the country, so do the number of real estate disputes. The authors argue the most favorable way to handle these disputes, particularly within large cities, is through alternative dispute resolution processes. To show this, the authors discuss the many ADR processes available to the citizens of New York and their many advantages.
{60} ADR—GENERAL
{90} SUBJ MATTER: RENTAL HOUSING
{136} ECONOMIC ADVANTAGES OF ADR

Andrew Wei-Min Lee, *What Chinese Characters Have to Offer Negotiation Pedagogy*, 31 HAMLINE J. PUB. L. & POL'Y 551 (2010).
This article looks at the nine ancient Chinese characters related to negotiation and why they were written in that way, proposing a deeper understanding of how Chinese characters are formed, have evolved and how they have become simplified can help the field of negotiation. The author asserts that embedded in the makeup of the words "negotiation," "cooperation," "conflict," "dispute," "compromise," "relationship," "forgive," "mediation," and "crisis," lies cultural history and wisdom.
{1} NEGOTIATION—GENERAL
{92} SUBJ MATTER: INT'L
{125} COMPARISONS: HISTORICAL

Michael H. LeRoy, *Do Partisan Elections of Judges Produce Unequal Justice When Courts Review Employment Arbitrations?*, 95 IOWA L. REV. 1569 (2010).
This article examines how judicial elections affect the administration of justice. Specifically, this article examines whether partisan judicial elections affect courts' review of arbitrator rulings ("awards") in employment disputes.
{44} ARBITRATION—GENERAL
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

Martin P. Levin, *The Contemporary Guide to Negotiating the Author-Publisher Contract* 54 N.Y.L. SCH. L. REV. 447 (2010).
This article examines issues facing the author and the publisher when negotiating a contract. Because the publisher writes the contract, the article

focuses on issues an author might raise. These potential issues include the status of the author as a criminal or a minor, the publishing rights for future mediums, rights to publish across languages and territories, the duration of the contract, payments, duty to publish, warranties, and penalties for breaching the contract.
{1} NEGOTIATION—GENERAL
{93} SUBJ MATTER: LABOR—GENERAL

Ariana R. Levinson, *Carpe Diem: Privacy Protection in Employment Act*, 43 AKRON L. REV. 331 (2010).
This article reviews the nature and extent of the private sector employee privacy problem, and surveys the strengths and weaknesses of the sources behind the proposed legislation. It argues one way to protect private sector employees' privacy, although permitting some employer monitoring, is from the privacy protection provided by arbitration in the unionized sector. These arbitrators use several safeguards to balance employee privacy and employer monitoring rights.
{44} ARBITRATION—GENERAL
{95} SUBJ MATTER: LABOR-MANAGEMENT (UNION)

Ariana R. Levinson, *What Hath the Twenty First Century Wrought? Issues in the Workplace Arising from New Technologies and How Arbitrators are Dealing with Them*, 11 TRANSACTIONS: TENN. J. BUS. L. 9 (2010).
The author discusses how arbitrators rule on workplace technology issues. The author points out union arbitrators tend to follow predictable patterns in their rulings involving discipline of workplace technology misuse. This article argues this is a clear difference from the slow adapting statutory and common law. Arbitrators consider factors like how consistently a rule is enforced, the behavior's severity, and other equitable factors.
{44} ARBITRATION—GENERAL
{95} SUBJ MATTER: LABOR-MANAGEMENT (UNION)
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Robert J. Levy, *Custody Investigations in Divorce-Custody Litigation,* 12 J. L. FAM. STUD. 431 (2010).
The article discusses that even though parties to a divorce control post-divorce placement of children by private agreement, the formal tradition includes a notion that judges have a special responsibility for the care and welfare of the children of divorce. Several divorce practice "reforms" have been adopted by legislatures. Some divorcing parents are required to undergo mediation of their marital disputes by a professional appointed by the judge.

{21} MEDIATION—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Yongdan Li, *Applying the Doctrine of Unconscionability to Employment Arbitration Agreements, with Emphasis on Class Action/Arbitration Waivers*, 31 WHITTIER L. REV. 665 (2010).
The author analyzes the interpretation of pre-dispute mandatory arbitration agreements in employment contracts. He first examines how employees have utilized the unconscionability doctrine to negate employment arbitration agreements in five states, including Ohio. Then, he examines the enforceability of class action and arbitration waivers in employment agreements and whether class action and arbitration waivers are beneficial to either employers or employees.
{44} ARBITRATION—GENERAL
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

Li-Wen Lin, *Corporate Social Responsibility in China: Window Dressing or Structural Change?* 28 BERKELEY J. INT'L L. 64 (2010).
Lin discusses corporate social responsibility initiatives in China and argues China has tangible incentives for developing corporate social responsibility (CSR). In the early stages, the CSR strategies are building general awareness and defining the future course. Lin argues these beginning CSR initiatives demonstrate real structural change in China.
{38} NON-BINDING RECOMMENDATION PROC—GENERAL
{81} SUBJ MATTER: CORPORATE
{92} SUBJ MATTER: INT'L

Jonathan C. Lipson, *Understanding Failure: Examiners and the Bankruptcy Reorganization of Large Public Companies*, 84 AM. BANKR. L.J. 1 (2010).
The reform efforts of the Bankruptcy Code's provisions on examiners include three recommendations. The first is to expand an examiner's powers to include explicit powers to object to claims, prosecute causes of action, and negotiate and conduct asset sales. The second recommendation is to empower an examiner to act as a "plan facilitator," to facilitate negotiations over a reorganization plan and, if the negotiations fail, to propose a plan herself. The third is to eliminate the obligation to file a report.
{1} NEGOTIATION—GENERAL
{74.5} SUBJ MATTER: BANKRUPTCY

Darren P. Lindamood, Comment, *Redressing the Arbitration Process: An Alternative to the Arbitration Fairness Act of 2009*, 45 WAKE FOREST L. REV. 291 (2010).
This comment reframes the debate regarding arbitration reform. Congress and scholars are focusing on the issue of the enforceability of the agreements. In contrast, this comment contends focusing on the ability of a plaintiff to seek meaningful judicial review would be more effective. Providing the right of the consumer or employee plaintiff to appeal a decision would grant the plaintiff more power by providing oversight to the arbitrator's decisions.
{44} ARBITRATION—GENERAL
{133} COURT REFORMS
{147} POWER IMBALANCE

David B. Lipsky, Ronald L. Seeber & J. Ryan Lamare, *The Arbitration of Employment Disputes in the Securities Industry: A Study of FINRA Awards*, 65 J. DISP. RESOL. 11 (2010).
The arbitration of employment disputes has been the subject of intense interest in recent years. This article reports on the results of the authors' recent study of 3,200 arbitration awards issued in employment cases administered under the auspices of FINRA, its predecessor the National Association of Securities Dealers (NASD), and the New York Stock Exchange (NYSE).
{44} ARBITRATION—GENERAL
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)
{106} SUBJ MATTER: SECURITIES

Anne Marie Lofaso, *Talking is Worthwhile: The Role of Employee Voice in Protecting, Enhancing, and Encouraging Individual Rights to Job Security in a Collective System*, 14 EMPLOYEE RTS. & EMP. POL'Y J. 55 (2010).
The author suggests requiring mandatory negotiation when employees are laid off because of a plant closing. After comparing existing U.S. and European Union requirements, the author proposes requiring covered employers to engage in mandatory bargaining when considering closing a plant or conducting mass layoffs. The author argues giving workers voice during negotiations will empower them to help to save their jobs and the businesses that employ them.
{1} NEGOTIATION—GENERAL
{93} SUBJ MATTER: LABOR—GENERAL
{127} REQUIREMENTS: MANDATE TO USE

Michael B. Lopez, *Resurrecting the Public Good: Amending the Validity Exception in the United Nations Convention on Contracts for the International Sale of Goods For the 21st Century*, 10 J. BUS. & SEC. L. 133 (2010).
The United Nations Convention on Contracts for the International Sale of Goods (CISG) governs the international sale of goods between signatory countries. This article contends a glaring omission exists within legal framework of the CISG: the absence of legal issues pertaining to the validity of contracts. This paper argues filling in that glaring gap is essential to the future success of the CISG, and it proposes how the gap can be filled through amending the treaty to provide for validity provisions and an arbitral body to interpret them.
{44} ARBITRATION—GENERAL
{75} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L

Brian Lucot, *A Collective-Bargaining Agreement, Which Clearly and Unmistakably Requires Union Members to Arbitrate ADEA Claims, is Enforceable as a Matter of Federal Law:* 14 Penn Plaza LLC v. Pyett, 12 DUQ. BUS. L.J. 313 (2010).
This article discusses the legality of arbitration provisions in collective-bargaining agreements, focusing on the issue as presented in *14 Penn Plaza v. Pyett*. The author argues in any case involving a union's CBA that clearly requires ADEA claims to be arbitrated, those arbitration clauses are enforceable as a matter of law. The nature of union CBAs, however, may leave a person without a forum to address grievances if the union seeks to block arbitration. The author proposes Congress consider either amending the Federal Arbitration Act to preclude ADEA claims from being settled by arbitration, or the ADEA to include a right to a judicial forum.
{44} ARBITRATION—GENERAL
{95} SUBJ MATTER: LABOR-MANAGEMENT (UNION)
{104} SUBJ MATTER: REGULATORY

Huijie Luo & Miao Li, *Reviewing Recent Developments in Chinese Maritime Law,* 41 J. MAR. L. & COM. 403 (2010).
This article studies recent developments in Chinese maritime law including delivery of goods without an original bill of lading, collision of ships, limitation of liability for maritime claims, pollution from ships, and maritime arbitration. Where a bill of lading stipulates that a valid arbitration clause in the charter shall apply to the resolution of any dispute arising from the bill of lading, the parties shall refer disputes to arbitration accordingly.

{44} ARBITRATION—GENERAL
{97} SUBJ MATTER: MARITIME
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Peter B. Maggs, *The Balance of Copyright in the United States of America*, 58 AM. J. COMP. L. 369 (2010).
This article discusses how the negotiations and compromises among copyright owners have largely ignored the needs of the copyright consumers. The major issue in this article involves the Google Books settlement. This settlement presented opportunities for public access to materials but raises the issue of monopoly power. The Google Books settlement agreement sought to solve the transaction cost and orphan works problems by effectively giving Google a compulsory license to display, print, and sell books that are out-of-print but still protected by copyright.
{1} NEGOTIATION—GENERAL
{79} SUBJ MATTER: CONSUMER

Martin H. Malin, *Competition in the Global Workplace: The Role of Law in Economic Markets: The Canadian Auto Workers-Magna International, INC. Framework of Fairness Agreement: A U.S. Perspective*, 54 ST. LOUIS L.J. 525 (2010).
In this article, Canada's newly passed, but much contested, Framework of Fairness Agreement is analyzed in light of U.S. labor laws. Canada's FFA replaced strikes with interest arbitration and eliminated traditional grievance procedures and direct election of officers. The author draws the conclusion that such an agreement would likely violate both the Labor Management and Disclosure Act and the National Labor Relations Act. However, the author notes unions have increasingly contracted out of NLRB provisions and uses Canada's FFA to determine the legality of these private agreements.
{44} ARBITRATION—GENERAL
{96} SUBJ MATTER: LABOR MANAGEMENT (UNION)

Brian Manning & Srividhya Ragavan, *The Dispute Settlement Process of the WTO: A Normative Structure to Achieve Utilitarian Objectives*, 79 UMKC L. REV. 1 (2010).
The authors critique the dispute mechanisms adopted by the World Trade Organization (WTO) after giving a general overview of the process by which the WTO resolves disputes. The authors' main criticisms of the WTO and its Dispute Settlement Body (DSB) are: (1) the settlements tend to favor the developed world over the developing world, (2) DSB decisions that do fault developed countries are under-enforced, and (3) the DSB mechanism is

designed to address issues affecting international trade, but, in practice, the DSB often deals with issues of national interest.
{60} ADR—GENERAL
{87} SUBJ MATTER: GOV'T
{92} SUBJ MATTER: INT'L
{121} SETTLEMENT: AUTHORITY
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Melissa Manwaring, Bobbi McAdoo & Sandra Cheldelin, *Orientation and Disorientation: Two Approaches to Designing "Authentic" Negotiation Learning Activities*, 31 HAMLINE J. PUB. L. & POL'Y 483 (2010).
This article compares negotiation learning techniques, specifically role-play exercises and adventure learning. The authors examine the results of each negotiation teaching style, including participant feedback and benefits and drawbacks of each. They conclude that "authenticity" is multi-faceted and strategies designed to orient or disorient negotiation students can be useful based on what type of authenticity the teacher seeks to provide to students.
{1} NEGOTIATION—GENERAL
{83} SUBJ MATTER: EDUCATION
{155} TEACHING

Cornel Marian, *Balancing Transparency: The Value of Administrative Law and* Mathews-*Balancing to Investment Treaty Arbitrations*, 10 PEPP. DISP. RESOL. L.J. 275 (2010).
This article examines the implications of the increasingly common use of arbitration in resolving contract disputes across international borders. After examining various redress mechanisms, the author argues the balancing test from *Mathews v. Eldridge* should be used for determining what procedural due process is needed and the test provides an adequate framework for balancing the need for transparency in arbitration with the demand for greater accountability in the breadth of arbitrator powers.
{44}ARBITRATION—GENERAL
{92}SUBJ MATTER: INT'L

Nathan Markey, *Atlantic Yards Community Benefit Agreement: A Case Study of Organizing Community Support for Development*, 27 PACE ENVTL. L. REV. 377 (2010).
This case study examines the negotiation process of a Community Benefit Agreement (CBA) in Brooklyn, New York. The author concludes future CBA coalitions can look to this model for how to draft a clear and complete contract, but should avoid some of its pitfalls.

{1} NEGOTIATION—GENERAL
{77} SUBJ MATTER: COMMUNITY

Daniel Markovits, *Arbitration's Arbitrage: Social Solidarity at the Nexus of Adjudication and Contract*, 59 DEPAUL L. REV. 431 (2010).
This article examines the traditional understanding of arbitration and its role relative to traditional courtroom adjudications. The author argues many of the traditional understandings of arbitration require one to view the contractual creation of arbitration as nothing more than a competitive endeavor illustrating the balance of power between the parties involved, thus cutting against arbitration's legitimacy as a method of dispute resolution. The author instead offers a different understanding of arbitration, dividing its functions between first-party and third-party arbitration. Under the author's perspective, arbitration is more than the product of competitive advantage – it can provide a legitimate method of dispute resolution.
{44} ARBITRATION—GENERAL
{73} SUBJ MATTER: GENERAL

Paul B. Marrow, *Determining if Mandatory Arbitration is "Fair": Asymmetrically Held Information and the Role of Mandatory Arbitration in Modulating Uninsurable Contract Risks*, 54 N.Y. L. SCH. L. REV. 187 (2010).
There is pending legislation to void mandatory predispute arbitration provisions for consumer transactions, franchise agreements, employment agreements, or any dispute arising from a statute meant to protect civil rights. This article argues mandatory arbitration is useful when one party has information about a transaction that the other party does not. The author explains mandatory arbitration levels the playing field between the parties and can serve as a substitute for insurance purchased from a third party.
{44} ARBITRATION—GENERAL
{76} SUBJ MATTER: CIVIL RIGHTS
{81} SUBJ MATTER: CORPORATE
{93} SUBJ MATTER: LABOR—GENERAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

William C. Martucci & Jeffrey E. Elkins, *Recent Missouri Decisions Define a New Era in Employment Discrimination,* 66 J. MO. B. 130 (2010).
The decision in *Morrow v. Hallmark Cards, Inc.* addresses the legitimacy of arbitration agreements. At its core, the *Morrow* decision stands for the proposition that an employment policy "requiring employees to give up their right of access to the courts for employment-related claims, and providing

arbitration as the exclusive means of resolution of those claims" is not a legally enforceable contract absent a return promise or consideration.
{44} ARBITRATION—GENERAL
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)
{126} REQUIREMENTS: CONTRACTUAL CLAUSES
{147} POWER IMBALANCE

Amanda L. Marutzky, *Making A Deal with the Devil: A Mediation Approach to Mitigating the Negative Effects of Church Conflict*, 10 PEPP. DISP. RESOL. L.J. 303 (2010).
This article presents itself as a framework for how to begin applying mediation approaches to church congregational conflicts. Starting from the premise that congregational systems are ill equipped to manage conflict on hot-button issues internally, the author argues for the viability of using mediators to facilitate cooperation. The author then identifies a few best practices for using a mediator, including maintaining impartiality and credibility, and presents successful case studies.
{21}MEDIATION—GENERAL
{73}SUBJ MATTER: GENERAL
{134}DISPUTE PREVENTION
{155}TEACHING

Susan McAleavey, Note, *Spendthrift Trust: An Alternative to the NBA Age Rule*, 84 ST. JOHN'S L. REV. 279 (2010).
This article finds fault with the NBA's recently adopted age rule, which prevents high school students from entering directly into the NBA. The author argues the current rule fails to protect players and instead only serves to limit their growth and potential. To remedy the situation, the author argues for the creation of a spendthrift trust. The spendthrift trust would allow athletes to enter the NBA directly after high school while addressing the NBA's policy concerns.
{60} ADR—GENERAL
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

Webb McArthur, *Reforming Fairness: The Need for Legal Pragmatism in the WTO Dispute Settlement Process*, 9 RICH. J. GLOBAL L. & BUS. 229 (2010).
The author finds the World Trade Organization's attempt to mitigate inherent inequities in its negotiation settlement process problematical as it attempts to balance two competing philosophies: egalitarianism and legal pragmatism. The article suggests both procedural and substantive development and

transparency changes that could be adopted by WTO to increase the effectiveness of its negotiations process.
{1} NEGOTIATION—GENERAL
{92} SUBJ MATTER: INT'L

Tracy Walters McCormack & Christopher John Bodnar, *Honesty is the Best Policy: It's Time to Disclose Lack of Jury Trial Experience*, 23 GEO. J. LEGAL ETHICS 155 (2010).
This article discusses the potential injury done to clients with the "vanishing jury trial" phenomenon because clients are unaware of their attorneys' diminishing jury trial experience and skills. Although alternative dispute resolution is supposed to be voluntary, the author argues lawyers have an ethical obligation to disclose their lack of trial experience and ADR has ceased to be an *alternative* to trial, instead becoming a substitute for a trial.
{60} ADR—GENERAL
{138} ETHICS: GENERAL
{139} ETHICS: MISREPRESENTATION & FAILURE TO DISCLOSE

Shelley McGill, *Consumer Arbitration Clause Enforcement: A Balanced Legislative Response*, 47 AM. BUS. L.J. 361 (2010).
This article discusses the split in North American courts over granting of consumer relief from mandatory predispute arbitration clauses. This dispute can only be challenged collectively in a class action suit. This article argues legislative action is necessary to correct this misapplication of arbitration policy and proposes a standardized comprehensive legislative scheme that remedies defects and omissions identified in other global legislative initiatives and conforms with international consumer protection principles.
{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{79} SUBJ MATTER: CONSUMER
{133} COURT REFORMS

Matthew McKinney et al., *Managing Transboundary Natural Resources: An Assessment of the Need to Revise and Update the Columbia River Treaty*, 16 HASTINGS W.-NW. J. ENVTL. L & POL'Y 307 (2010).
This article examines the need for renegotiation of the Columbia River Treaty between the U.S. and Canada. It makes recommendations for what would be a complex multiparty, multi-issue negotiation process. It also considers the benefits of using impartial, nonpartisan mediators and facilitators during the renegotiation, and notes the knowledge they would be required to have.
{1} NEGOTIATION—GENERAL

{84} SUBJ MATTER: ENVIRONMENT
{92} SUBJ MATTER: INT'L

Richard H. McLaren, *Twenty-Five Years of the Court of Arbitration for Sport: A Look in the Rear-View Mirror*, 20 MARQ. SPORTS L. REV. 305 (2010).
The article reviews what effect the Court of Arbitration for Sport (CAS) has had in its 25 years of existence. The author notes it is recognized as the "final and binding appeals body for disputes in sports" and CAS has effectively distanced itself from the International Olympic Committee (IOC), from which it originated, with the CAS overruling the IOC multiple times. The author asks what is next for CAS, noting the mediation services that CAS offers is the place to begin in order to "further contribute a vital and needed process to world sport."
{44} ARBITRATION—GENERAL
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

Emanuele Menegatti, *The Choice of Law in Employment Contracts' Covenants Not to Compete Under the Italian Legislation*, 31 COMP. LAB. L. & POL'Y J. 799 (2010).
Arbitration clauses are excluded from the material scope of the Rome Convention (and Regulation), instead the controlling legislation is Article 4 of Legge No. 218/1995. The Italian legislation does not require verification by the courts of the validity of arbitration agreements or clauses, nor does it specify which law should be used to analyze validity. However, in foreign arbitration, the only suitable solution is to use the national law of the court.
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L
{128} REQUIREMENTS: STATUTORY OR RULES

Robert A. Merring, *Spotlight on ADR – Part II: The Mortgage Foreclosure Crisis: Can We Talk?*, 52 ORANGE COUNTY LAW. 9 (2010).
This article summarizes the federal and state efforts to curtail the foreclosure meltdown created by the current real estate crisis and puts the crisis into historical perspective. The article suggests why mediation may offer a better alternative than the limited range of current governmental initiatives because mediation can offer a wider range of more economically viable, long-term options for residential and commercial properties.
{21} MEDIATION—GENERAL
{87} SUBJ MATTER: GOV'T
{136} ECONOMIC ADVANTAGES OF ADR

Deborah Jones Merritt, *Pedagogy, Progress, and Portfolios*, 25 OHIO ST. J. ON DISP. RESOL. 7 (2010).
This article discusses new pedagogies in legal education aimed at enhancing teaching of professional and skills training for law students. The author suggests these new pedagogies will be useful for teaching alternative dispute resolution. She focuses on one particular pedagogy, Professional Learning Portfolios, and outlines the learning portfolio concept. The author focuses on how law schools might structure portfolios for their students and how these portfolios might improve legal education. Lastly, a discussion follows about how professional learning portfolios might improve ADR curriculum.
{60} ADR—GENERAL
{83} SUBJ MATTER: EDUCATION
{155} TEACHING

Timothy Meyer, *Power, Exit Costs, and Renegotiation in International Law*, 51 HARV. INT'L L.J. 379 (2010).
This article claims shifting balances in power substantially affect states' negotiations regarding formal and substantive aspects of international agreements. It asserts a state's bargaining power lies within its next best alternative agreement. It argues if the alternative is more favorable than the current agreement, the state can use that fact to renegotiate in its favor.
{1} NEGOTIATION—GENERAL
{92} SUBJ MATTER: INT'L
{147} POWER IMBALANCE

Leonora Meyercord, *Avoiding State Bankruptcy: Mediation as an Alternative to Resolving State Tax Disputes*, 29 REV. LITIG. 925 (2010).
This article advocates using mediation and alternative dispute resolution to supplement the current tax resolution system to increase efficiency and compliance. The article also argues states should encourage mediation or negotiation as a first step, while also offering a variety of ADR processes, thus enabling taxpayers to choose the most appropriate system for them.
{21} MEDIATION—GENERAL
{108} SUBJ MATTER: TAX

The Hon. Paul R. Michel, *A Review of Recent Decisions of the United States Court of Appeals for the Federal Circuit: Afterword: Past, Present, and Future in the Life of the U.S. Court of Appeals for the Federal Circuit*, 59 AM. U. L. REV. 1199 (2010).
The author reviews changes that have occurred during the twenty-eight-year history of the court, and touches on the introduction of its mandatory

mediation program in 2006. The author suggests the mediation program, which settled 48 cases in 2009 (including 31 patent appeals), adds capacity to dispose of appeals that is equal to at least one additional judge.
{21} MEDIATION—GENERAL
{75} SUBJ MATTER: COMMERCIAL
{133} COURT REFORMS

Geoffrey P. Miller, *Preliminary Judgments*, 2010 U. ILL. L. REV. 165 (2010).
This article discusses the use of the preliminary judgment procedure by courts as a way of improving traditional pre-trial attempts at dispute resolution. A preliminary judgment would help parties better understand case strength, improve settlement outcomes, and provide information to guide future conduct. In addition, the author argues courts already communicate this information in much less direct ways, and encouraging a direct procedure would be more effective.
{38} NON-BINDING RECOMMENDATION PROC—GENERAL
{73} SUBJ MATTER: GENERAL
{133} COURT REFORMS

Kimberly J. Miller, *The Uniform Dispute Resolution Policy: An Uphill Fight for Domain Name Registrants*, 19 J. CONTEMP. LEGAL ISSUES 520 (2010).
This article addresses the Uniform Dispute Resolution Policy (UDRP). Although the UDRP is intended to provide impartial and independent resolutions to domain-name disputes, this article contends the UDRP framework is decidedly biased in favor of the trademark holder.
{44} ARBITRATION—GENERAL
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Nicole Miller, Comment, *How Property Rights Are Affected by the Texas-Mexico Border Fence: A Failure Due to Insufficient Procedure,* 45 TEX. INT'L L.J. 631 (2010).
The author discusses the procedural problems with the construction of the Texas-Mexico Border Fence. The author believes the problems stem from a lack of "reason-giving" and a lack of ability to negotiate. "Reason-giving" is the requirement agencies explain why they made certain decisions. The author supports the government using negotiation to acquire property to build the fence because it lends legitimacy to the project and avoids litigation.
{1} NEGOTIATION—GENERAL
{87} SUBJ MATTER: GOV'T

{136} ECONOMIC ADVANTAGES OF ADR

Andrew D. Mitchell & David Heaton, *The Inherent Jurisdiction of WTO Tribunals: The Select Application of Public International Law Required by the Judicial Function,* 31 MICH. J. INT'L L. 559 (2010).
The authors look at World Trade Organization (WTO) Tribunals and whether these tribunals have the power to apply certain rules of public international law. The authors argue WTO Tribunals have inherent jurisdiction but recognition of this jurisdiction does not give them carte-blanche to use any international law principles to resolve WTO disputes. The authors also argue inherent jurisdiction permits WTO Tribunals to apply only international law rules that satisfy certain conditions.
{60} ADR—GENERAL
{92} SUBJ MATTER: INT'L
{114} 3D PARTY: PRACTICE OF LAW
{121} SETTLEMENT: AUTHORITY

Andrew D. Mitchell & Joanne Wallis, *Pacific Pause: The Rhetoric of Special & Differential Treatment, The Reality of WTO Accession,* 27 WIS. INT'L L.J. 663 (2010).
In the 1990s after years of negotiations, three small Pacific island economies suspended accession into the World Trade Organization (WTO). Using these three countries, Tonga, Vanatu, and Somoa, as a case study, the article examines the negotiation and accession process into the WTO. These countries illustrate the equity concerns of the accession process and shortcomings of special and differential treatment of developing countries. The authors argue for reform of the accession process.
{1} NEGOTIATION—GENERAL
{92} SUBJ MATTER: INT'L
{146} ORGANIZATION POLICIES & RULES

Michael Moffitt, *Islands, Vitamins, Salt, Germs: Four Visions of the Future of ADR in Law Schools (and a Data-Driven Snapshot of the Field Today),* 25 OHIO ST. J. ON DISP. RESOL. 25 (2010).
In this article, the author attempts to: 1) provide a detailed and data-driven snapshot of the field of alternative dispute resolution within legal education, and 2) suggest four models of how law schools approach the teaching of alternative dispute resolution. The "Islands of ADR" model directs a school to devote much of its curricular and co-curricular offerings to alternative dispute resolution. The "ADR as vitamins" model describes schools that require students to take a limited number of ADR courses. The "ADR as

Salt" model describes schools which do not offer ADR-specific courses, but which incorporate small doses of ADR throughout the curriculum. Finally, the "ADR as Germs" model describes a process where individual faculty members independently introduce alternative dispute resolution principles into their courses.
{60} ADR—GENERAL
{83} SUBJ MATTER: EDUCATION
{155} TEACHING

Nima H. Mohebbi, Comment, *Back Door Arbitration: Why Allowing Nonsignatories to Unfairly Utilize Arbitration Clauses May Violate the Seventh Amendment*, 12 U. PA. J. BUS. L. 555 (2010).
This comment examines the impact of the Supreme Court's decision in *Arthur Andersen LLP v. Carlisle*, which the author contends has the effect of allowing nonsignatories to use arbitration clauses in unfair and unforeseen ways. This practice has several negative impacts, including misapplying the doctrine of equitable estoppel and denying plaintiffs the Seventh Amendment right to a jury trial.
{44}ARBITRATION—GENERAL
{73}SUBJ MATTER: GENERAL
{133}COURT REFORMS
{149}QUALITY CONTROL

Fred L. Morrison, *The Protection of Foreign Investment In The United States of America*, 58 AM. J. COMP. L. 437 (2010).
This article discusses the U.S.' broad protection of all forms of investment, foreign and domestic. Because a foreign investor must exhaust available local remedies before turning to diplomatic representations or any available international arbitration process, the existence of this judicial remedy delays resort to those remedies. Hence few arbitration claims involving ordinary expropriation are filed against the U.S. U.S. law favors arbitration and seeks the enforcement of arbitral awards.
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L

Margaret L. Moses, *Arbitration Law: Who's in Charge?*, 40 SETON HALL L. REV. 147 (2010).
This article discusses the judicially created legislative program which has supplanted the text and history of the Federal Arbitration Act with two major Supreme Court cases. The *Hall Street* decision stripped judicial review on the merits from the FAA, and the *Mitsubishi* decision added statutory claims

to those the act was meant to cover. The author implores Congress to reclaim its legislation by addressing these unwarranted paradigm shifts.
{44} ARBITRATION—GENERAL
{73} SUBJ MATTER: GENERAL
{133} COURT REFORMS

Margaret L. Moses, *The Pretext of Textualism: Disregarding Stare Decisis in* 14 Penn Plaza v. Pyett, 14 LEWIS & CLARK L. REV. 825 (2010).
The author offers a critique of the Supreme Court's 5-4 *14 Penn Plaza LLC v. Pyett* decision that mandated union workers arbitrate statutory discrimination claims. She states the decision is unsupported by the text of the 1925 Federal Arbitration Act. She also contends the decision is not consistent with prior arbitration precedent and severs substantive civil rights statutory protections. She concludes Congress should repeal the decision.
{44} ARBITRATION—GENERAL
{95} SUBJ MATTER: LABOR-MANAGEMENT (UNION)
{133} COURT REFORMS

Julian Davis Mortenson, *The Meaning of "Investment": ICSID's Travaux and the Domain of International Investment Law,* 51 HARV. INT'L L.J. 257 (2010).
This article urges the expansion of ICSID jurisdiction over investment arbitration. It posits tribunals should consider "investment" as encompassing any economic activity or asset. It qualifies, however, that pure trade transactions should not be subject to ICSID jurisdiction. The article details why expanded ICSID jurisdiction reflects the "original intent" behind the organization's formation. It additionally lists various policy reasons supporting expanded jurisdiction.
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L

Marlene Moses & Jessica Uitto, *Family Matters: An Overview of Tennessee's Burgeoning Alternative Dispute Resolution Process: Collaborative Law,* 46-SEP TENN. B.J. 32 (2010).
The authors discuss the origin of Collaborative Law, how the Uniform Collaborative Law Act (U.C.L.A.) has been adopted in various states, and how Tennessee failed to adopt the U.C.L.A. The article discusses the process of Collaborative Law and how it compares to litigation and mediation. The article discusses the ethical implications and guidelines of Collaborative Law. The authors also discuss the advantages of Collaborative Law and situations where it should not be used.

{53} COLLABORATIVE LAW—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{144} LEGISLATION

Matt Mullarkey, Note, *For the Love of the Game: A Historical Analysis and Defense of Final Offer Arbitration in Major League Baseball*, 9 VA. SPORTS & ENT. L.J. 234 (2010).
This note addresses the growing gap between MLB franchises due to the effects of arbitration, its defenses, and the possible cures for the competitive imbalance. It discusses the historical background and evolution of the MLB's Final Offer-style arbitration, and examines the effects and consequences of Final Offer Arbitration. The note ultimately defends Final Offer Arbitration, but illustrates possible alternatives.
{44} ARBITRATION—GENERAL
{107} SUBJ MATTER: SPORTS AND ENTERTAINMENT
{125} COMPARISONS: HISTORICAL

Jessica Mullery, Note, *Fulfilling the Washington Principles: A Proposal for Arbitration Panels to Resolve Holocaust-Era Art Claims*, 11 CARDOZO J. CONFLICT RESOL. 643 (2010).
This note focuses on the issue of restitution for Nazi-looted art. It argues first the principles stemming from the Washington Conference of 1998 have failed and thus new processes are needed to cure the system. The author proposes a U.S.-based arbitral tribunal with limited jurisdiction would be the best way to handle Nazi-looted art disputes in the future.
{44} ARBITRATION—GENERAL
{79} SUBJ MATTER: CONSUMER
{92} SUBJ MATTER: INT'L
{134} DISPUTE PREVENTION

LoValerie Mullins, *Employees Losing Power, Losing Jobs: Making the Case for Mediating Power in the Era of Buy-ins and Bailouts*, 10 PEPP. DISP. RESOL. L.J. 523 (2010).
The author notes the recent change in workplace dynamics that has led to self-regulation among private corporations. Self-regulation has resulted in a great disparity of power between the corporation and employees. To counter the power disparity, the author suggests dispute resolution systems should be designed to neutralize power differences in private workplace issues in America and argues for an employee-centered approach to mediation.
{21} MEDIATION—GENERAL
{73} SUBJ MATTER: GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

Jane C. Murphy, *Revitalizing the Adversary System in Family Law*, 78 U. CIN. L. REV. 891 (2010).
This article examines the shift of family dispute resolution from the courts to alternative methods such as mediation and negotiation. First, it claims there are underestimating risks in using alternative dispute resolution such as power imbalance and asymmetric information. Second, the article argues there are changes to the current court system that could be made before the system takes such an influential shift to alternative methods.
{60} ADR—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Stephen Wills Murphy, Note, *Judicial Review of Arbitration Awards Under State Law*, 96 VA. L. REV. 887 (2010).
This note studies the extent to which meaningful judicial review exists under the Majority Rule: 1) through statutory grounds, including review for arbitral misconduct and exceeding arbitral power, and 2) through non-statutory grounds, including review of arbitrators' factual errors, arbitrators' legal errors, and whether an award violates public policy.
{44} ARBITRATION—GENERAL
{133} COURT REFORMS

Stephanie Myers, Comment, *Blue Skies Ahead: Auction Rate Securities and the Need for A Private Right of Action for New York Investors*, 30 PACE L. REV. 1109 (2010).
This comment discusses the downfalls of complexities and inherent unfairness in auction rate securities, particularly in the light of the post-2008 economy. After noting many pitfalls of such securities and states' reactions to them, the author urges the New York Legislature to adopt the Uniform Securities Act to protect the rights of investors and to take advantage of Financial Industry Regulatory Authority (FINRA) arbitration provisions.
{44}ARBITRATION—GENERAL
{102}SUBJ MATTER: PUBLIC POLICY
{104}SUBJ MATTER: REGULATORY
{106}SUBJ MATTER: SECURITIES
{144}LEGISLATION

Laurence C. Nolan, *Identifying Parents who may Kill their Children in Highly Contested Custody Cases: Can Mental Health Providers help Judges*

avoid the Deadly Game of Russian Roulette?, 9 WHITTIER J. CHILD & FAM. ADVOC. 227 (2010).
Many jurisdictions are examining alternatives to litigation to counteract the adversarial impact on family issues. Mediation is widely used as a first alternative for family issues. However, it may not be the most efficient method to prevent parents from killing their children. This article examines how to increase collaboration between mental health practitioners and lawyers to prevent parents from killing their children in custody cases.
{21} MEDIATION—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Amanda L. Norris & Katina E. Metzidakis, *Public Protests, Private Contracts: Confidentiality in ICSID Arbitration and the Cochabamba Water War*, 15 HARV. NEGOT. L. REV. 31 (2010).
This article examines concerns regarding confidentiality of international commercial arbitration when one party is a government through the context of an ICSID arbitration between Bolivia and multinational engineering corporation Bechtel. It conducts a general survey of confidentiality protections afforded by the ICSID and analyzes the positions of both sides to the confidentiality debate. It also considers how the controversy ignited by the case may affect the future role of the ICSID.
{44} ARBITRATION—GENERAL
{75} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L
{132} CONFIDENTIALITY

Note, *Designing a Prisoner Reentry System Hardwired to Manage Disputes*, 123 HARV. L. REV. 1339 (2010).
This note argues the need for a more successful prison reentry program. It draws on dispute systems design principles and suggests three main criteria for designing a reentry program: involvement of all stakeholders, movement when the timing is right for the stakeholders, and incorporating a mechanism for revaluating and revising the process. It asserts these points would make the reentry system more effective and potentially minimize recidivism.
{60} ADR—GENERAL
{100} SUBJ MATTER: PRISONS

Rusty O'Kane, Comment, *Proportional Pragmatism: A Defense of International Arbitration Agreements in the Face of Asymmetrical Paternalism*, 30 NW. J. INT'L L. & BUS. 263 (2010).

A distinctive feature of many bilateral investment agreements is that they provide for procedures such as international arbitration. These provide guarantees to investors such as fair and equitable treatment, protection from expropriation, and security for assets. These types of agreements have been attacked for years. This comment contends the use of investment arbitration agreements does not provide too few protections for developing countries in arbitration proceedings, and these agreements provide protection to foreign investors, which causes economic development.
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L

Richard L. Ottinger, *Copenhagen Climate Conference—Success or Failure?*, 27 PACE ENVTL. L. REV. 411 (2010).
This article discusses the Copenhagen Climate Conference and the attempt to reach an agreement to achieve binding commitments to reduce global greenhouse gas emissions. The author discusses what was accomplished at the conference and the potential for a future agreement on climate change.
{1} NEGOTIATION—GENERAL
{84} SUBJ MATTER: ENVIRONMENT

Lisa Larrimore Ouellette, Note, *Access to Bio-Knowledge: From Gene Patents to Biomedical Materials*, 2010 STAN. TECH. L. REV. N1 (2010).
This note argues increasing biomedical researchers' access to biological material is critical to biomedical innovation. The problem of the "anticommons" refers to the high transaction costs a biotechnology company incurs by negotiating with multiple rights-holders to genetic material. This note, however, argues the problem of the anticommons is overstated, and negotiating patent rights does little to halt scientific innovation.
{1} NEGOTIATION—GENERAL
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Megan Shepston Overly, Note, *When Private Stakeholders Fail: Adapting Expropriation Challenges in Transnational Tribunals to New Governance Theories*, 71 OHIO ST. L. J. 341 (2010).
This note addresses the problem of clean drinking water in developing countries and what is being done to ensure its availability. To this end, the author explores the interaction of two systems: the international investment arbitration mechanism and environmental regulation based on new governance theories. The author concludes by exploring how the Biwater tribunal implemented the right of public participation in transnational

arbitration, and how the right may be harnessed and expanded in the future to adapt to the changing transnational world order.
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L
{102} SUBJ MATTER: PUBLIC POLICY

Matthew J. Parlow, *The NBA and the Great Recession: Implications for the Upcoming Collective Bargaining Agreement Renegotiation*, 6 DEPAUL J. SPORTS L. & CONTEMP. PROBS. 195 (2010).
This article analyzes the nature of the National Basketball Association's collective bargaining agreement, and the impact the recent economic recession has had on the league. The author focuses on the impact the recent recession will have on the upcoming renegotiation of the league's CBA. The article concludes the recession will likely have a substantial impact on the renegotiation process, as many of the contentious issues – player salary, luxury tax, revenue sharing, etc. – all focus on financial and economic issues important to both sides of the negotiation process.
{1} NEGOTIATION—GENERAL
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

Michael M. Pettersen et al., *Representation Disparities and Impartiality: An Empirical Analysis of Party Perception of Fear, Preparation, and Satisfaction in Divorce Mediation when only One Party has Counsel*, 48 FAM. CT. REV 663 (2010).
The authors compare experiences in family law mediation when one party is represented and the other is pro se. By analyzing experiences of participants, the authors assert mix representation, where one party is represented and the other is pro se, generate the lowest satisfaction before and after the mediation. As a result, the authors assert mediators should approach mixed-representation cases more cautiously.
{21} MEDIATION—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{147} POWER IMBALANCE

Markus A. Petsche, *International Commercial Arbitration and The Transformation of The Conflict of Laws Theory*, 18 MICH. ST. J. INT'L L. 453 (2010).
The article examines the effect that international commercial arbitration has had on the conflict of laws theory and methodology. The article argues as international commercial arbitration has developed, it has transformed the traditional conflict of laws theory. The article also argues international

commercial arbitration is able to "bridge the gap" in conflict of laws theory that previous scholarship was unable to achieve.
{44} ARBITRATION—GENERAL
{75} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L

John Phillips, *Protecting Those in a Disadvantageous Negotiating Position: Unconscionable Bargains as a Unifying Doctrine*, 45 WAKE FOREST L. REV. 837 (2010).
This article argues the doctrine of unconscionable bargains, as developed in some common law jurisdictions, is the most appropriate tool for protecting those in a disadvantageous negotiating position. It responds sensitively to a whole range of contexts. Furthermore, and more controversially, since unconscionability underpins related doctrines such as undue influence, duress, and some aspects of mistake, these doctrines should be replaced by the overarching doctrine of unconscionable bargains.
{1} NEGOTIATION—GENERAL
{147} POWER IMBALANCE

Kasey C. Phillips, *Digest:* Schatz v. Allen Matkins Leck Gamble and Mallory LLP, 13 CHAP. L. REV. 449 (2010).
The case analyzed in this article pertains to a recent California Supreme Court decision holding the California Arbitration Agreement works hand-in-hand with the Mandatory Fee Arbitration Act, but in conflicts, the CAA takes over. When a law firm invoked an arbitration clause from an original contract upon its client, the client claimed the fee dispute was governed under the MFAA and not the CAA.
{44} ARBITRATION—GENERAL
{79} SUBJ MATTER: CONSUMER
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Jamie Ryan Pool, Comment, *An End to Grazing Lease Litigation: An Examination of Alternative Dispute Resolution Schemes that Could Resolve the Overgrazing Dispute on State and Federally Owned Rangelands in the Western United States*, 27 PACE ENVTL. L. REV. 325 (2009).
This comment addresses the problem of overgrazing on publicly owned land in Western U.S. and the accompanying litigation between environmental groups and ranching associations. The author suggests such litigation is both time-consuming and costly. To control this problem, the author proposes federal and state legislation and regulatory agency changes to encourage the use of alternative dispute resolution to resolve conflicts.

{60} ADR—GENERAL
{84} SUBJ MATTER: ENVIRONMENT

Rachel S. Portnoy, Comment, *Embracing the Alternative:* Cable Connection, Inc. v. DirectTV, Inc. *puts the Alternative Back Into Alternative Dispute Resolution*, 44 NEW ENG. L. REV. 991 (2010).
The California Arbitration Act (CAA) makes arbitration agreements valid, enforceable, and irrevocable unless the contract is revoked. However, parties to these proceedings do not always feel a fair result was reached, and sometimes the parties feel the arbitrator committed a legal error. This comment argues the California Supreme Court was correct in allowing parties to contract beyond the CAA to allow for judicial review of arbitration.
{44} ARBITRATION—GENERAL
{73} SUBJ MATTER: GENERAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Lauge Skovgaard Poulsen, *The Significance of South-South BITs For the International Investment Regime: A Quantitative Analysis*, 30 NW. J. INT'L L. & BUS. 101 (2010).
Bilateral investment treaties (BITs) were created to promote and protect investments from rich states to developing states (North-South BITs). However, there have been an increasing number of BITs between two developing countries (South-South BITs). This article analyzes the differences between negotiated North-South BITs and South-South BITs. The author encourages more research to be done to identify the intentions of developing countries when entering into a South-South BIT.
{1} NEGOTIATION—GENERAL
{92} SUBJ MATTER: INT'L

Stephen J. Powell, *Expanding the NAFTA Chapter 19 Dispute Settlement System: A Way to Declaw Trade Remedy Laws in a Free Trade Area of the Americas?,* 16 L. & BUS. REV. AM. 217 (2010).
Chapter 19 of the NAFTA transfers judicial review of U.S., Canadian, and Mexican government investigations under the anti-dumping and countervailing duty (AD/CVD) laws from national courts to bi-national panels of private international law experts. The system stands as a unique surrender of judicial sovereignty to an international body, a hybrid of national courts and international dispute settlement with as yet no parallel in the world of international trade.
{60} ADR—GENERAL
{92} SUBJ MATTER: INT'L

Adam Primm, *Salary Arbitration Induced Settlement in Major League Baseball: The New Trend*, 17 SPORTS LAW. J. 73 (2010).
This note discusses the recent trend of MLB players opting for signing long-term contracts early on in their careers, before they are able to arbitrate with the team for a potentially higher salary. The note argues players are willing to accept higher salaries for longer contracts up-front to avoid arbitration, and teams prefer avoiding arbitration to increase salary stability and decrease the number of disputes with players.
{44} ARBITRATION—GENERAL
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

Will Pryor, *Alternative Dispute Resolution*, 63 SMU L. REV. 275 (2010).
The only major mediation case in 2009 disqualified a firm from representation because a partner in the firm mediated the case before trial. The majority of arbitration developments fit into two categories: (1) The enforceability of arbitration clauses or agreements, and (2) whether to confirm or set aside arbitration rewards. Arbitration's popularity may be decreasing, however, due to unfavorable success rates.
{60} ADR—GENERAL
{73} SUBJ MATTER: GENERAL
{122} SETTLEMENT: ENFORCEMENT
{126} REQUIREMENTS: CONTRACTUAL CLAUSES
{133} COURT REFORMS

Dorcas Quek, *Mandatory Mediation: An Oxymoron? Examining the Feasibility of Implementing a Court-Mandated Mediation Program*, 11 CARDOZO J. CONFLICT RESOL. 479 (2010).
Because of Rule 16 of the Federal Rules of Civil Procedure and the Civil Justice Reform Act of 1990, courts are now encouraged to mandate pre-trial mediation for all disputes. However, there is a debate whether mediation should be compelled in every instance or whether it should be limited to certain circumstances. This article compares the US method to other jurisdictions and gives recommendations as to how to improve the system.
{21} MEDIATION—GENERAL
{102} SUBJ MATTER: PUBLIC POLICY
{127} REQUIREMENTS: MANDATE TO USE

Peter J. Quinn, Comment, *A Click Too Far: The Difficulty in Using Adhesive American Law License Agreements to Govern Global Virtual Worlds*, 27 WIS. INT'L L.J. 757 (2010).

American corporations who license virtual world games include clickwrap licenses to control all virtual property and user rights disputes. A clickwrap license is an adhesion contract that typically includes a binding arbitration provision. With the growing market of virtual world games in foreign jurisdictions, these contracts can have serious implications. The author examines these implications and the public policy debate behind consumer contracts of adhesion.
{44} ARBITRATION—GENERAL
{78} SUBJ MATTER: COMPUTER
{79} SUBJ MATTER: CONSUMER

John Quigley, *Palestine Statehood: A Rejoinder to Professor Robert Weston Ash*, 36 RUTGERS L. REC. 257 (2010).
This article provides a rebuttal of Professor Robert Ash's criticism of author Quigley's prior article, *The Palestine Declaration to the International Criminal Court: The Statehood Issue*. In this rebuttal, Quigley argues 1) Palestine recognizes itself as a state, 2) the international community recognizes Palestine's sovereignty, and 3) Palestine has the requisite attributes to be considered a state. The article furthers that Palestinian negotiators are recognized by Israel as having the capacity of securing a border agreement further legitimizing Palestine statehood.
{1} NEGOTIATION—GENERAL
{92} SUBJ MATTER: INT'L

Orna Rabinovich-Einy & Roee Tsur, *The Case for Greater Formality in ADR: Drawing on the Lessons of Benoam's Private Arbitration System*, 34 VT. L. REV. 529 (2010).
According to the ADR prototype, ADR processes are premised on the following principal elements: 1) promoting party control and flexibility; 2) addressing individual disputes on an ad hoc basis; 3) dependence on formal law and courts; and 4) the lack of publicity. Benoam is a private for-profit entity whose business is to provide an effective dispute resolution avenue for its users, which deviates from the prototype. The authors find as flexibility and confidentiality decrease, consistency and predictability become dominant values and systemic goals outweigh individual preferences. Thus, ADR processes can and do perform effectively when they deviate from the conventional prototype.
{44} ARBITRATION—GENERAL
{73} SUBJ MATTER: GENERAL

Mona Rafeeq, *Rethinking Islamic Law Arbitration Tribunals: Are they Compatible with Traditional American Notions of Justice?*, 28 WIS. INT'L L.J. 108 (2010).
This article argues Islamic arbitration tribunals could be implemented in the American justice system and be consistent with both American and Islamic notions of justice. In order to satisfy American notions of justice, the author recommends the arbitration decisions are consistent with the Federal Arbitration Act and state arbitration codes and the arbitration tribunals be limited to jurisdiction over civil matters.
{44} ARBITRATION—GENERAL
{102} SUBJ MATTER: PUBLIC POLICY
{146} ORGANIZATION POLICIES & RULES

Daniel Rainer, Note, *The Impact of* West Tankers *on Parties' Choice of a Seat of Arbitration*, 95 CORNELL L. REV. 431 (2010).
The note highlights the need for dependable dispute resolution in recognition of the increasing number of transnational agreements. Especially important is the choice of a seat of arbitration, which according to the New York Convention, determines the lex arbitri. The actual effect of *West Tankers* on parties' choice of a seat of arbitration is unknown, but international arbitration counsel has noticed the potential for a shift in the field.
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER—INT'L
{124} COMPARISONS: CROSS CULTURAL

Susan Raines, Timothy Hedeen & Ansley Boyd Barton, *Best Practices for Mediation Training and Regulation: Preliminary Findings*, 48 FAM. CT. REV 541 (2010).
The authors' study recommends best practices for mediation training in U.S. Court-connected mediation programs after analyzing existing literature and gathering data from interviews, surveys and observations. The authors discuss findings such as improving training program design, the importance of role-playing, class logistics, teaching methods, and ethics.
{21} MEDIATION—GENERAL
{73} SUBJ MATTER: GENERAL
{149} QUALITY CONTROL
{155} TEACHING

Brian Ray, *Engagement's Possibilities and Limits as a Socioeconomic Rights Remedy*, 9 WASH. U. GLOBAL. STUD. L. REV. 399 (2010).
In February 2009, the Constitutional Court of South Africa developed a

housing remedy called "engagement." Engagement requires municipalities to utilize negotiation or mediation when a new housing policy will require evicting residents. Engagement has been used sparingly but this article examines three pivotal decisions on engagement. The author argues engagement can be a powerful tool to deal with complex social issues.
{1} NEGOTIATION—GENERAL
{92} SUBJ MATTER: INT'L
{102} SUBJ MATTER: PUBLIC POLICY

Sarah J. Read, *What Would You Change About Mediation Considering Changes Proposed from the Other Side of the Atlantic*, 65 J. DISP. RESOL. 62 (2010).
A British magazine editor posted a blog entry entitled "Six Things I'd Change About Mediation." This article summarizes that blog entry, discusses the relevance of the blog entry's suggestions to American mediation, and formulates a revised list of suggested changes applicable to the U.S.
{21} MEDIATION—GENERAL
{92} SUBJ MATTER: INT'L

Jeffrey A. Redding, *The Politics of Identity after Identity Politics: Queer/Religious Friendship in the Obama Era*, 33 WASH. U. J.L. & POL'Y 211 (2010).
The author examines the changing nature of gay politics and argues for further progress, collaboration is needed among the gay and religious communities. Family law would benefit from further collaboration. However, in Canada and the United Kingdom, family law arbitrations have been used to reinforce family norms. The author believes a more pluralistic administration of family law would enable a political friendship.
{44} ARBITRATION—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Marian Reidy, Suman Beros & Kim Sperduto, *Mediated Investigative E-Discovery*, 2010 FED. CTS. L. REV. 79 (2010).
The authors assert most parties respond to and formulate electronic discovery requests based on inefficient and ineffective "keyword searching." To improve the success of electronic discovery requests, the author proposes "mediated investigative e-discovery." In mediated e-discovery, a neutral third party conducts searches and facilitates agreements between the parties, which the author argues would result in more efficient and fair discovery.
{21} MEDIATION-GENERAL
{102} SUBJ MATTER: PUBLIC POLICY

{133} COURT REFORMS
{136} ECONOMIC ADVANTAGES OF ADR
{137} EFFECT OF PROCESS OF NON-PARTICIPATORY PARTIES
{149} QUALITY CONTROL

Adam P. Rifkind, *The IOM Clinical Trial Agreement Template versus the Roundtable Clauses: Reader Update*, 3 J. HEALTH & LIFE SCI. L. 100 (2010).
This article compares the new clinical trial agreement (CTA) and The Round Table Clauses. These templates are used in negotiations to facilitate agreement between academic medical centers and the industry sponsors of clinical trials. The article argues both these templates are very similar and the recent publication of the CTA was meant to start negotiations at a closer point of agreement than usual between industry and academia.
{1} NEGOTIATION—GENERAL
{105} SUBJ MATTER: SCIENCE AND TECHNOLOGY

Diane Ring, *Who is Making International Tax Policy?: International Organizations As Power Players in a High Stakes World*, 33 FORDHAM INT'L L.J. 649 (2010).
There is a mandatory arbitration clause in OECD Model Tax Convention on Income and Capital. This "mutual agreement procedure" provided for mandatory arbitration in certain circumstances. The Commission on Taxation recommended "compulsory and binding arbitration in international tax matters should be adopted in bilateral or multilateral tax conventions." The author argues the problems of international tax require more than one unilateral solution and a mandatory arbitration clause is not helpful.
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L

Greta L. Rios & Edward P. Flaherty, *Legal Accountability of International Organization: Challenges and Reforms: International Organization Reform or Impunity? Immunity is the Problem*, 16 ILSA J. INT'L & COMP. L. 433 (2010).
Noting the version of sovereign immunity granted to international organizations does not help any reform efforts by these organizations, the authors propose a number of possibilities to fix this problem. One includes an international arbitration scheme, which the authors conclude would be more effective in resolving issues than the internal systems currently in place at these organizations.
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L

{146} ORGANIZATION POLICIES & RULES

Leonard L. Riskin, *Annual Saltman Lecture: Further Beyond Reason: Emotions, The Core Concerns, And Mindfulness In Negotiation*, 10 NEV. L.J. 289 (2010).
The author argues a new system, the Core Concerns System, will improve negotiations. The author also argues the reason those negotiators who know and employ the Core Concerns System and remain unhappy with the result are not utilizing the system appropriately. The author then offers suggestions on how to better a negotiator's use of the Core Concerns System, such as increasing the negotiator's awareness skills.
{1} NEGOTIATION—GENERAL
{73} SUBJ MATTER: GENERAL

Anthea Roberts, *Power and Persuasion in Investment Treaty Interpretation: The Dual Role of States*, 104 AM. J. INT'L L. 179 (2010).
The author examines how an interpretive approach to investment treaty arbitration, relying on the subsequent practice and agreement of treaty parties over past tribunal awards and academic opinions, would help restore parties' confidence in investment tribunals. The article suggests the proper context for, and scope of, a tribunal's decision to take subsequent agreements into account as evidence when interpreting investor-state treaties.
{44} ARBITRATION—GENERAL
{75} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L

Nicholas A. Robinson, *The Sands of Time: Reflections on the Copenhagen Climate Negotiations*, 27 PACE ENVTL. L. REV. 599 (2010).
This article examines some of the problems of the Copenhagen Conference of Parties (COP), perspectives on a longer-range view, and the next phases in climate change negotiations.
{1} NEGOTIATION—GENERAL
{84} SUBJ MATTER: ENVIRONMENT

Peyton H. Robinson, *Alternative Dispute Resolution Procedures with IRS Appeals*, 23 UTAH BAR. J. 18 (2010).
The author describes how the IRS is using Appeals to expand its ADR alternatives and argues they are effective in reaching an agreement. Instead of waiting for the proposed adjustment to go to a 30-day letter by the examiner, a taxpayer may involve Appeals as a mediator at the end of an IRS examination (after the IRS has fully developed the disputed issue) either

through the Fast Track Mediation ("FTM") Procedure, or through the Fast Track Settlement ("FTS") Procedure. If taxpayers do not conclude the Appeals process with an agreed settlement of their tax dispute then they have the option of post-Appeals mediation or arbitration.
{60} ADR—GENERAL
{108} SUBJ MATTER: TAX

Spencer C. Robinson, Comment, *Keeping Secured Lending Secure: The Limited Legacy of Chrysler's § 363 Bankruptcy*, 14 N.C. BANKING INST. 515 (2010).
This comment analyzes Chrysler's bankruptcy proceedings and sale. There were complaints that negotiations between the TARP-backed banks and the executive branch were unfair or unethical. This comment argues the negotiations were fair and the executive branch did not cross legal and ethical boundaries because the government properly exerted influence on the secured lenders, and, as the financier, the government has a substantial say in whether the company will sell its assets under a Section 363 plan.
{1} NEGOTIATIONS—GENERAL
{87} SUBJ MATTER: GOV'T

Nancy H. Rogers, *The Next Phase for Dispute Resolution in Law Schools: Less Growth, More Change*, 25 OHIO ST. J. ON DISP. RESOL. 1 (2010).
This article introduces the Symposium, "Teaching and Technology: Teaching ADR and the Future of Dispute System Design." The author acknowledges ADR courses now constitute a significant portion of law school course offerings. The author posits that law schools should focus on how to improve ADR curriculum, instead of focusing on the continued growth of ADR programs. The article focuses on how dispute resolution faculty should help law schools prepare graduates to be "good lawyers," particularly in the "human" part of lawyering, and how dispute resolution practice and teaching should change in light of technological advancements.
{60} ADR—GENERAL
{83} SUBJ MATTER: EDUCATION
{155} TEACHING

Sara Roitman, Note, *Beyond Reproach: Has the Doctrine of Arbitral Immunity Been Extended Too Far For Arbitration Sponsoring Firms?*, 51 B.C. L. REV. 557 (2010).
This article focuses on arbitral immunity and looks at an approach taken by a San Francisco City Attorney, who challenges a law firm's immunity by arguing the city is acting in its law enforcement capacity and is seeking

equitable relief. Roitman argues that arbitral immunity is enabling firms to continue hearings in unfair and biased manners.
{44} ARBITRATION—GENERAL
{79} SUBJ MATTER: CONSUMER
{126}REQUIREMENTS: CONTRACTUAL CLAUSES

Peter B. Rutledge & Anan W. Howard, *Arbitrating Disputes Between Companies Individuals: Lessons from Abroad*, 65 J. DISP. RESOL. 31 (2010).
The authors surveyed the approaches of four European countries, Canada, and Australia to determine the accuracy of the perception that foreign countries ban all pre-dispute arbitration clauses in the consumer and employment contexts. They find no such bans in the countries. This finding casts doubt on the argument Congress should adopt the Arbitration Fairness Act in order to bring the U.S. into alignment with foreign countries.
{44} ARBITRATION—GENERAL
{87} SUBJ MATTER: GOV'T
{92} SUBJ MATTER: INT'L

Alberto R. Salazar V., Ph.D., *NAFTA Chapter 11, Regulatory Expropriation, and Domestic Counter-Advertising Law*, 27 ARIZ. J. INT'L & COMP. LAW 31 (2010).
The author discusses how the North American Free Trade Agreement prevents Canadian authorities from imposing mandatory counter-advertising duties upon foreign food corporations as a way of promoting healthful diet choices. The author notes that arbitral tribunals, which are not subject to judicial review on the merits, lack public accountability and therefore often appear to tilt the balance in favor of international food corporations.
{44} ARBITRATION—GENERAL
{75} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L

Cynthia A. Savage, *Recommendations Regarding Establishment of a Mediation Clinic*, 11 CARDOZO J. CONFLICT RESOL. 511 (2010).
The author argues the lack of clinical training for mediation in American law schools is a detriment to the practice and method as a whole. To cure this defect, she proposes a clinical design that features consistent terminology, effective design and expert supervision.
{21} MEDIATION—GENERAL
{83} SUBJ MATTER: EDUCATION
{151} ROLE OF LAWYERS
{155} TEACHING

Tali Schaefer, *Saving Children or Blaming Parents? Lessons from Mandated Parenting Classes*, 19 COLUM. J. GENDER & L. 491 (2010).
Legislation requires a growing number of divorcing parents to attend "parent education programs." The classes are required in 18 states. They focus on the harm caused to a child by divorce, and what parents can do make divorce easier on their child. The author contends these classes do little to improve children's lives and ignore the detrimental effects of divorce on women.
{60} ADR—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Michael P. Scharpf, Note, *Court v. Arbitrator: Who Should Decide Whether Prelitigation Conduct Waives the Right to Compel an Arbitration Agreement?*, 84 ST. JOHN'S L. REV. 363 (2010).
This note analyzes the circuit court split in deciding how to interpret the Supreme Court's holding in *Howsam*, which left a "gray area" over who should decide matters implicating both substantive and procedural elements. The author recommends arbitrators, not the courts, should have the ability to rule on "gray area" issues such as prelitigation waiver of conduct in light of recent Supreme Court decisions, the FAA and for efficiency considerations.
{44} ARBITRATION—GENERAL
{73} SUBJ MATTER: GENERAL
{133} COURT REFORMS

Stephan W. Schill, Glamis Gold, Ltd. v. United States, 104 AM. J. INT'L L. 253 (2010).
The author analyzes the decision in *Glamis Gold*, in which a Canadian mining company claimed state regulations that protected a sacred Native American religious site violated the North American Free Trade Agreement (NAFTA). The author notes the arbitral tribunal's denial of the company's expropriation claims infers that agreements like NAFTA do not offer blanket protection against state measures that make exploitation of land costly.
{44} ARBITRATION—GENERAL
{75} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L

Amy J. Schmitz, *Legislating in the Light: Considering Empirical Data in Crafting Arbitration Reforms*, 15 HARV. NEGOT. L. REV. 115 (2010).
This article examines arbitration clauses in consumer contracts. It claims policymakers rely overly on limited, politically motivated data and ignore the need for further behavioral and empirical research to create effective regulations. Using the author's own study of consumer groups, the article

asserts arbitration disclosure must be clearly and concisely communicated in order to have an impact. It also suggests additional research is necessary to inform arbitration policy design.
{44} ARBITRATION—GENERAL
{79} SUBJ MATTER: CONSUMER
{126} REQUIREMENTS: CONTRACTUAL CLAUSES
{144} LEGISLATION

Andrea Kupfer Schneider, Sandra Cheldelin & Deborah Kolb, *What Travels: Teaching Gender in Cross Cultural Negotiation Classrooms*, 31 HAMLINE J. PUB. L. & POL'Y 531 (2010).
This article discusses the impact of gender on negotiations, focusing on the reactions to a presentation the authors gave on the relationship between the stereotype content model and gender issues in negotiation, which focused on the likeability v. competence model. After considering the responses, including that a woman's negotiation position can vary based on her culture, the authors describe the organizational, cultural, and individual ways that gender can affect negotiations.
{1} NEGOTIATION—GENERAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL

Alaina C. Schroeder, *The Interplay Between the Municipalities Financial Recovery Act and the Policemen and Firemen Collective Bargaining Act: An Analysis of* City of Scranton v. Fire Fighters Local Union No. 60, 19 WIDENER L.J. 541 (2010).
This article examines *City of Scranton v. Fire Fighters Local Union No. 60.* The Municipalities Financial Recovery Act (Act 47) allowed non-binding arbitration awards, but the Policemen and Firemen Collective Bargaining Agreement (Act 111) required binding arbitration. The court ruled Act 47 applied to arbitration awards and the Court of Common Pleas could vacate and modify the award.
{44} ARBITRATION—GENERAL
{95} SUBJ MATTER: LABOR-MANAGEMENT (UNION)

Matthew Schroeder, Note and Comment, *Forgotten At Sea – An International Call to Combat Islands of Plastic Waste in the Pacific Ocean*, 16 SW. J. INT'L L. 265 (2010).
This note discusses the problem of islands of plastic waste in the Pacific Ocean, and how the only way to force nations to take responsibility for pollution is the creation of a compulsory system of dispute resolution. A

dispute resolution system would force economic groupings (such as NAFTA) to consider environmental issues, and allow environmentally progressive countries a source of bargaining power during negotiations.
{44} ARBITRATION—GENERAL
{84} SUBJ MATTER: ENVIRONMENT
{92} SUBJ MATTER: INT'L

Daniel M. Schwarz, Note, *A Regression from the New York Convention: Questions Raised by* Thomas v. Carnival Corporation, 64 U. MIAMI L. REV. 1441 (2010).
This note discusses the doctrine set forth in the Supreme Court case *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc. and Vimar Seguros y Reasequros v. M/V Sky Reefer* as applicable in Thomas v. Carnival Corporation. The author looks at the prospective waiver doctrine and the U.S. court's interpretation and application of the doctrine. The article asserts the court in *Thomas v. Carnival Corporation* erred in two fundamental ways in applying the prospective waiver doctrine. The court failed to consider arbitration's potential to protect rights under the Seaman's Wage Act and whether the U.S. courts would have an opportunity to review the fairness.
{44} ARBITRATION—GENERAL
{87} SUBJ MATTER: GOV'T
{102} SUBJ MATTER: PUBLIC POLICY
{126} REQUIREMENTS: CONTRACTUAL CLAUSES
{133} COURT REFORMS

Briana L. Seagriff, Note, *Keep Your Lunch Money: Alleviating Workplace Bullying with Mediation*, 25 OHIO ST. J. ON DISP. RESOL. 575 (2010).
This note explores the phenomenon of "workplace bullying" and considers the potential of using mediation in order to resolve disputes resulting from workplace bullying.
{21} MEDIATION—GENERAL
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

Daniel L. Shapiro, *From Signal to Semantic: Uncovering the Emotional Dimension of Negotiation*, 10 NEV. L. J. 461 (2010).
The author argues a negotiator must pay attention to a subset of motives, deemed core concerns, to understand the emotional dimension of negotiation. The author then responds to Clark Freshman's critique of core concerns. The author argues core concerns apply universally and cross-culturally.
{1} NEGOTIATION—GENERAL
{73} SUBJ MATTER: GENERAL

{124} COMPARISONS: CROSS-CULTURAL

Darren K. Sharp & Laurence R. Tucker, *Traversing Legal Labyrinths in Arbitration,* 66 J. MO. B. 24 (2010).
This article discusses which law to apply when counsel is confronted with a dispute that may be governed by an arbitration agreement, the procedures to enforce an arbitration agreement, potential defenses to an arbitration agreement; the bases to vacate or confirm an arbitration award, and appeal issues once an arbitration award is rendered. This article is intended to address issues that arise frequently when litigating arbitration issues.
{44} ARBITRATION—GENERAL
{73} SUBJ MATTER: GENERAL

Hon. Randall T. Shepard, *The Self-Represented Litigant: Implications for the Bench and Bar*, 48 FAM. CT. REV 607 (2010).
The article addresses the rise in self-represented litigants for family law cases and describes what Indiana has done to accommodate persons that represent themselves. Although the article primarily focuses on traditional litigation, the author discusses the Indiana Supreme Court's website on ADR, the benefits of ADR, and how individuals can pursue various ADR remedies.
{60} ADR—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{125} COMPARISONS: HISTORICAL
{155} TEACHING

Benjamin Shmueli, *Tort Litigation Between Spouses: Let's Meet Somewhere in the Middle*, 15 HARV. NEGOT. L. REV. 195 (2010).
This article examines whether the legal system should handle tort litigation between spouses differently. It proposes an alternative approach to intrafamilial tort claims. A significant component of the approach would require parties to attend court-supervised mediation sessions while the legal proceedings are temporarily stopped. It argues the sessions preserve the court's control and may resolve the dispute in a non-judicial manner cognizant of the emotions involved.
{53} COLLABORATIVE LAW—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{110} SUBJ MATTER: TORTS—OTHER

Judy Shopp, *Mediation: Confidentiality and Privilege*, 81 PA. BAR ASSN. QUARTERLY 101 (2010).
This article focuses on mediation confidentiality for Pennsylvania in the aftermath of *Gatto v. Verizon*, a Third Circuit case which allowed a mediator to be subpoenaed, and thereby conflicted with the Pennsylvania Mediation Statute. Despite this seemingly substantial shift in law, the author argues *Gatto* is narrow and easily distinguishable, so the case will only slightly affect the Pennsylvania Mediation Statute and federal mediation protections.
{21} MEDIATION—GENERAL
{73} SUBJ MATTER: GENERAL
{133} COURT REFORMS

Jason B. Shorter, *Final-Offer Arbitration for Health Care Billing Disputes: Analyzing One State's Proposed Dispute Resolution Process*, 9 APPALACHIAN J. L. 191 (2010).
The author examines how mandatory arbitration for so-called "balance billing" disputes—an industry term for occasions when a doctor accepts a discounted payment from an insurance carrier and attempts to collect the balance from the patient—could help temper the escalating cost of health care. The article also examines California's recent effort to enact a mandatory arbitration process for balance billing disputes.
{44} ARBITRATION—GENERAL
{89} SUBJ MATTER: HOSPITALS
{91} SUBJ MATTER: INSURANCE
{144} LEGISLATION

Mark R. Shulman & Lachmi Singh, *China's Implementation of the UN Sales Convention Through Arbitral Tribunals*, 48 COLUM. J. TRANSNAT'L L. 242 (2010).
Foreign investors generally choose arbitration to resolve their disputes. In China, the China International Economic and Trade Arbitration Commission (CIETAC) handles these disputes. The authors identified the following CIETAC areas for reform: respecting validity of arbitration clauses, the efficient enforcement of arbitration awards, CIETAC's practice of mandating use of its own personnel as arbitrators, and high administrative fees.
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL

Amy Sinden, *Allocating the Cost of the Climate Crisis: Efficiency Versus Justice*, 85 WASH. L. REV. 293 (2010).

The international climate crisis has caused controversy about who bears the responsibility for the costs of greenhouse emissions. In international negotiations, the developed and developing worlds are not reaching an agreement because they are focusing on two different ideals. The developed world focuses on economic efficiency and the developing world focuses on justice. The article explains justice provides a better framework for who should pay for the emissions.
{1} NEGOTIATION—GENERAL
{84} SUBJ MATTER: ENVIRONMENT
{92} SUBJ MATTER: INT'L

Alex Skibine, *Indian Gaming and Cooperative Federalism.* 42 ARIZ. ST. L. J. 253 (2010).
Skibine argues the Indian Gaming Regulatory Act should be amended to include the ability for Indian tribes to sue state officials. There is a legislative move toward a "cooperative" federalism in Indian affairs. Instead of imposing federal laws on the tribe, the government and the tribes negotiate compacts. Skibine sees potential Tenth Amendment problems with this system, and proposes reshaping the Act by enacting tribal-state compact agreements through negotiated rule-making procedures.
{60} ADR—GENERAL
{104} SUBJ MATTER: REGULATORY

William J. Snape, III, *Joining the Convention on Biological Diversity: A Legal and Scientific Overview of Why the United States Must Wake Up,* 10 SUSTAINABLE DEV. L. & POL'Y 6 (2010).
This article argues the U.S. should join the Convention on Biological Diversity (CBD), an international agreement to protect biodiversity. He argues the U.S. will benefit from signing onto the CBD in order to participate in important upcoming negotiations on climate change and ocean protection. The CBD has wide latitude in creating international negotiated agreements, which U.S. participation can help guide.
{1} NEGOTIATION—GENERAL
{84} SUBJ MATTER: ENVIRONMENT
{92} SUBJ MATTER: INT'L

Gary Soo, Yun Zhao & Dennis Cai, *Better Ways of Resolving Disputes in Hong Kong- Some Insights From the Lehman-Brothers Related Investment Product Dispute Mediation and Arbitration Scheme,* 9 J. INT'L BUS. & L. 137 (2010).

This article reviews the effectiveness of a mediation and arbitration scheme enacted in Hong Kong in the wake of the collapse of Lehman Brothers. This paper first considers the use of mediation as an alternative dispute resolution compared to the traditional means of litigation, presents an outline of mediation in Hong Kong along with an introduction to the Scheme, considers the latest empirical data published on the Scheme, and evaluates the Scheme.
{60} ADR—GENERAL
{87} SUBJ MATTER: GOV'T
{92} SUBJ MATTER: INT'L

Nicholas Stack, *The Great Lakes Compact and an Ohio Constitutional Amendment: Local Protectionism and Regional Cooperation,* 37 B.C. ENVTL. AFF. L. REV. 493 (2010).
Stack argues local protectionism undermines the cooperation necessary for sustainable management of the Great Lakes. He argues Ohio's Amendment "to protect private property" near Lake Erie undermines the comprehensive Great Lakes system management. Stack argues ultimately the future of the Great Lakes requires the eight surrounding states avoid excessive local protectionism in order to maintain an atmosphere of cooperation.
{1} NEGOTIATION—GENERAL
{84} SUBJ MATTER: ENVIRONMENT

Demian Stauber & Zhongqi Zhou, *Protection of Intellectual Property Rights at Trade Fairs in China—Analysis of the Current Legal Framework and Comparison with other Approaches*, 10 U.C. DAVIS BUS. L.J. 207 (2010).
The authors argue China's laws offer the same protection for Intellectual Property Rights violations at trade fairs through court enforcement as in European countries and the U.S. and also provide for the additional advantage of administrative proceedings by implementing the "Protection Measures for Intellectual Property Rights during Exhibitions" ("PMEX"). However, the major flaws of PMEX include the limited power of the office, the complete lack of rules for the decision-making of the office, and the limitations in staffing. Without these concerns, China's system for protection of IPRs at trade fairs could serve as a model for other jurisdictions.
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL

Eleanor Stein, *The Long Island City Power Outage Settlement: A Case Study in Alternative Dispute Resolution*, 27 PACE ENVTL. L. REV. 357 (2009).
This case study examines the settlement process surrounding a nine-day power outage in Consolidated Edison Company of New York, Inc.'s network.
{60} ADR—GENERAL
{84} SUBJ MATTER: PUBLIC UTILITIES

Jeffrey W. Stempel, *Feeding the Right Wolf: A Niebuhrian Perspective on the Opportunities and Limits of Mindful Core Concerns Dispute Resolution*, 10 NEV. L. J. 472 (2010).
The author argues the core concerns approach and mindfulness may be useful to the adequately trained negotiator, but perils and negative consequences exist for the insufficiently mindful negotiator. The author argues a Niebuhrian approach to mindfulness will assist the sufficiently mindful negotiator to determine when mindfulness will or will not be effective, especially when disputants are selfish, unrealistic, or too adversarial.
{1} NEGOTIATION—GENERAL
{73} SUBJ MATTER: GENERAL

Jean R. Sternlight, *Lawyerless Dispute Resolution: Rethinking a Paradigm*, 37 FORDHAM URB. L.J. 381 (2010).
The author addresses self-representation in ADR processes and states dispute resolution processes are not conducive to self-representation. The author states to change this problem, issues such as how neutral parties should be selected and trained need to be discussed. It is important to realize disputants in ADR processes may need attorney representation.
{60} ADR—GENERAL
{73} SUBJ MATTER: GENERAL
{151} ROLE OF LAWYERS

Daxton R. "Chip" Stewart, *Designing a Public Access Ombuds Office: A Case Study of Virginia's Freedom of Information Advisory Council*, 9 APPALACHIAN J. L. 217 (2010).
In a case study of Virginia's Freedom of Information Advisory Council, which manages disputes over access to public records, the author reviews the creation, implementation, and performance of the office through the lens of Dispute System Design Theory, finding widespread support for the office among stakeholder groups. The author concludes the office's authority to

investigate governmental misconduct did not hamper its ability to carry out its mission.
{60} ADR—GENERAL
{87} SUBJ MATTER: GOV'T
{144} LEGISLATION
{145} OMBUDSPERSON

Daxton R. "Chip" Stewart, *Let the Sunshine in, or Else: An Examination of the "Teeth" of State and Federal Open Meetings and Open Records Laws,* 15 COMM. L. & POL'Y 265 (2010).
The author suggests greater use of alternative dispute resolution mechanisms would promote greater compliance with open records laws. So far, only Florida, Georgia, New Jersey, and Pennsylvania have included mediation mechanisms in their open records laws. The author suggests a change from adjudication-based processes to negotiation-based processes is not easy, but if the traditional system continues to fail, other methods of increasing transparency in government should be explored.
{60} ADR—GENERAL
{104} SUBJ MATTER: REGULATORY

Isabel Studer, *The NAFTA Side Agreements: Toward a More Cooperative Approach?* 45 WAKE FOREST L. REV. 469 (2010).
This article argues that linking the environmental and labor enforcement provisions to NAFTA's dispute-resolution mechanisms could end up further inhibiting the development of a more fruitful collaborative agenda on labor issues. The current adversarial model has prevented the three NAFTA parties from taking advantage of the opportunities for cooperation that naturally arise from geographic proximity, shared resources, high economic integration, and complementary labor markets and demographic dynamics.
{53} COLLABORATIVE LAW—GENERAL
{60} ADR—GENERAL
{84} SUBJ MATTER: ENVIRONMENT
{93} SUBJ MATTER: LABOR—GENERAL

John O'Shea Sullivan & Ashby L. Kent, *Trial Practice and Procedure,* 61 MERCER L. REV. 1193 (2010).
The article looks at whether claims brought pursuant to the Credit Repair Organizations Act are subject to arbitration. The author talks about contractual clauses regarding arbitration, specifically clauses stating if any dispute between the parties arises out of the agreement, the parties agree to submit the dispute to binding arbitration under the auspices of the American

Arbitration Association. The article looks at various court cases involving claims brought under the CROA, in which the court must decide whether these claims should be litigated or are subject to arbitration.
{44} ARBITRATION—GENERAL
{73} SUBJ MATTER: GENERAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Alicia J. Surdyk, *On the Continued Vitality of Securities Arbitration: Why Reform Efforts Must Not Preclude Predispute Arbitration Clauses*, 54 N.Y.L. SCH. L. REV. 1131 (2010).
Almost all investors who open an account with a brokerage firm must sign a standard form agreement that compels mandatory arbitration for disputes. One piece of legislation that has been debated in Congress is the Arbitration Fairness Act of 2009, which would render all predispute arbitration agreements unenforceable. This article argues that predispute arbitration agreements should be enforceable, but that reformation is needed.
{44} ARBITRATION—GENERAL
{144} LEGISLATION

Survey, *2009 Annual Survey: Recent Developments in Sports Law,* 20 MARQ. SPORTS L. REV. 497 (2010).
This article discusses how almost every collective bargaining agreement between a professional sports league and a players union includes a provision requiring the arbitration of certain types of disputes. The article provides court cases that illustrate the legal effect of contractual arbitration provisions and those cases tackled by the American Arbitration Association in its designated role as the exclusive body to resolve disputes related to athlete-eligibility under the Ted Stevens Amateur Sports Act.
{44} ARBITRATION—GENERAL
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Lawrence Susskind, Alejandro E. Camacho & Todd Schenk, *Collaborative Planning and Adaptive Management in Glen Canyon: A Cautionary Tale*, 35 COLUM. J. ENVTL. L. 1 (2010).
This article looks at the failings of Collaborative Adaptive Management (CAM) and the Adaptive Management Program (AMP) as an alternative to regulation as a means to deal with natural resource management. Specifically, the article analyzes their use in the management of the Glen Canyon watershed as a case study. One key shortcoming was the lack of professional neutrals during mediations and a lack of joint fact-finding.

{60} ADR—GENERAL
{84} SUBJ MATTER: ENVIRONMENT
{104} REGULATORY

Robert Terenzi, Jr., Note, *Friending Privacy: Toward Self-Regulation of Second Generation Social Networks*, 20 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 1049 (2010).
This note talks about social networking and cites several cases where courts have had to confront whether to enforce arbitration provisions on these sites. The author urges Congress should provide social networks with a set of requirements for their terms-of-use agreements—including strict notice requirements—and encourage courts to apply these notice requirements rigorously. This would make ownership of personal information as contractual bargaining between the network and its users.
{44} ARBITRATION—GENERAL
{73} SUBJ MATTER: GENERAL

Aubrey L. Thomas, Comment, *Nonsignatories in Arbitration: A Good-Faith Analysis*, 14 LEWIS & CLARK L. REV. 953 (2010).
The author looks at how agency and contract law can be used to mandate arbitration participation by third parties. She then looks at how courts struggle to read a duty of good faith standard into the contracts. Examining international and domestic arbitration, the author found the parties expect such a good faith requirement to be imposed.
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L
{137} EFFECT OF PROCESS OF NON-PARTICIPATORY PARTIES

Randall Thomas et al., *Arbitration Clauses in CEO Employment Contracts: An Empirical and Theoretical Analysis*, 63 VAND. L. REV. 959 (2010).
This article finds CEOs in industries that are experiencing rapid changes are more likely to have arbitration provisions in their contracts because CEOs want their disputes to be arbitrated quickly. Also, CEOs at relatively poorly performing firms are more likely to have arbitration provisions in their agreements. It further finds despite the purportedly overwhelming benefits of arbitration (especially in the employment area), inclusion of arbitration clauses is about even with no arbitration, casting doubt on claims of universal superiority of arbitration as a means of resolving employment disputes.
{44} ARBITRATION—GENERAL
{81} SUBJ MATTER: CORPORATE
{93} SUBJ MATTER: LABOR – GENERAL

Benjamin D. Tievsky, Note, *The Federal Arbitration Act After Alafabco: A Case Analysis*, 11 CARDOZO J. CONFLICT RESOL. 675 (2010).
In *Satomi Owners Ass'n v. Satomi, L.L.C.*, the Washington Supreme Court held an arbitration clause in a real estate warranty addendum enforceable, sending shockwaves through the real estate and ADR communities. This note examines the effect this decision has on real estate arbitration going forward and what role the Federal Arbitration Act plays in real property disputes. The article also discusses the FAA's constitutionality under the commerce clause.
{44} ARBITRATION—GENERAL
{90} SUBJ MATTER: RENTAL HOUSING
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

David J. Townsend, *Stretching the Dispute Settlement Understanding: U.S.–Cotton's Relaxed Interpretation of Cross-Retaliation in the World Trade Organization*, 9 RICH. J. GLOBAL L. & BUS. 135 (2010).
This article considers under what circumstances arbitrators for the World Trade Organization (WTO) should be allowed to authorize cross-retaliation. The authorization of cross-retaliation is analyzed under the recent WTO decision allowing for Brazil's cross-retaliation against the U.S. for its subsidization of cotton producers. The author argues the use of cross-retaliation should be limited to situations where a state is exporting only a small amount of goods, services, or intellectual property.
{44} ARBITRATION—GENERAL
{75} SUBJ MATTER: COMMERCIAL

John M. Townsend, *The New Bahrain Arbitration Law and the Bahrain "Free Arbitration Zone,"* 65 J. DISP. RESOL. 74 (2010).
This article discusses how Bahrain's new Arbitration Law and "Free Arbitration Zone" address concerns that multinational companies have about arbitrating international commercial disputes in the Middle East.
{44} ARBITRATION—GENERAL
{75} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L

Hannibal Travis, *The Principles of the Law of Software Contracts: At Odds with Copyright, Consumer, and European Law?*, 84 TUL. L. REV. 1557 (2010).
This article analyzed whether the Principles of the Law of Software Contracts do enough to protect the interests of consumers and the public. The author concludes the Principles seem to be an imperfect attempt to unify the law of software contracts, codify best practices, and develop the law in a

desirable direction. The author mentions the Principles do not define unconscionable contract terms or terms in violation of public policy, but they do suggest limitations of remedies that require arbitration in an unreasonably distant forum or before an expensive arbitrator, or deny any remedy for defective/positively destructive software, may be unconscionable and void.
{44} ARBITRATION—GENERAL
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Neal R. Troum, *Another View of* Rent-A-Center, *Arbitration and Arbitrability: Who is Watching the Watchmen?* 28 ALTERNATIVES TO HIGH COST LITIG. 184 (2010).
This is an article about the broad power of arbitrators. It discusses who watches the arbitrators—monitoring partiality, corruption, and fraud. The author concentrates on whether a case goes to arbitration in the first place and whether the court or an arbitrator will have the power to decide the dispute. Focusing on arbitrability of disputes and power of arbitrators, this article explores *Rent-A-Center, West Inc. v. Jackson*, 130 S. Ct. 2772 (2010).
{44} ARBITRATION—GENERAL

Eric Tuchmann, *Supreme Court Hears Argument in* Stolt-Nielsen, 65 J. DISP. RESOL. 5 (2010).
On Dec. 9, 2009, the U.S. Supreme Court heard oral argument in the case *Stolt-Nielsen v. AnimalFeeds*, where the question presented was whether the Federal Arbitration Act (FAA) permits classwide proceedings where the arbitration agreement is silent with respect to such claims. The Court's decision in *Stolt-Nielsen* will have a direct impact on the future of class action arbitrations, and may also have an effect on the future of class action waivers and litigation regarding the enforceability of such waivers.
{44} ARBITRATION—GENERAL
{73} SUBJ MATTER: GENERAL

Alexandra S. Tuffour, Note, *"Let's Talk about Sex": Exploring the Benefits of Mediation in Lawsuits Involving the Contraction of Sexually Transmitted Diseases*, 25 OHIO ST. J. ON DISP. RESOL. 779 (2010).
This note argues mediation can serve as a valuable means of resolving conflicts stemming from the transmission of STDs. The author suggests mediation can offer victims the opportunity to confront the person who infected them in a safe and structured environment, while also holding the offender accountable and providing assistance and compensation to victims.
{21} MEDIATION—GENERAL
{110} SUBJ MATTER: TORTS—OTHER

Benjamin A. Tulis, *Final-Offer "Baseball" Arbitration: Contexts, Mechanics & Applications*, 20 SETON HALL J. SPORTS & ENT. L. 85 (2010).
Final-offer arbitration, most discussed for its application in Major League Baseball salary arbitration, has advantages over conventional arbitration in reaching settlements. In the setting of public employment law, this method is codified inconsistently in different states. The author evaluates these differences, discussing which criteria are best, and recommends increased use of final-offer arbitration in contexts such as private value disputes and interest arbitrations under the proposed Employee Free Choice Act.
{44} ARBITRATION—GENERAL
{93} SUBJ MATTER: LABOR—GENERAL
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT
{128} REQUIREMENTS: STATUTORY OR RULES

Martha Simo Tumnde, *Harmonization of Business Law in Cameroon: Issues, Challenges and Prospects*, 25 TUL. EUR. & CIV. L.F. 119 (2010).
The author argues OHADA (in English, OHBLA: Organization for the Harmonization of Business Law in Africa) is a significant step towards overcoming traditional distinctions, at least between the common law and the civil law systems. According to the author, this task is not impossible. Other OHADA Uniform Acts are products of convergence of laws. For example, in the area of accounting, transportation of goods by road, and arbitration, the Uniform Acts display a move towards international standards. It is in Africa's interest to eventually have a single and Uniform law over the region. Harmonization of business in Africa falls naturally within the framework of the objectives of regional and continent wide organizations.
{44} ARBITRATION—GENERAL
{75} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL

Matthew Turk, Note, *Bargaining and Intellectual Property Treaties: The Case for a Pro-Development Interpretation of Trips but not Trips Plus*, 42 N.Y.U. J. INT'L L. & POL. 981 (2010).
This note analyzes the bargaining process for IP treaties for developing countries. The note examines both the TRIPS and TRIPS Plus Free Trade Agreements. The TRIPS agreements are interpreted in a "pro-development" way that gives flexibility to developing countries for provisions relating to access to medicine. This note argues the pro-development interpretation is warranted for the TRIPS agreement, but not the TRIPS Plus agreement, because TRIPS Plus was negotiated in a free and informed way.

{1} NEGOTIATION—GENERAL
{73} SUBJ MATTER: GENERAL

Rebecca Ullman, *Enhancing the WTO Tool Kit: The Case for Financial Compensation*, 9 RICH. J. GLOBAL L. & BUS. 167 (2010).
This article analyzes the World Trade Organization's (WTO) Dispute Settlement Understanding 160 (DSU 160) and argues financial compensation should be a remedy available to WTO members. The article traces the history of DSU 160 back to its American roots, the Fairness in Music Licensing Act (FMLA). However, the authors distinguish DSU 160 from the FMLA and propose that financial compensation as a remedy is appropriate due to DSU 160's international level.
{44} ARBITRATION—GENERAL
{75} SUBJ MATTER: COMMERCIAL

Daniel Vandekoolwyk, Comment, *Threshold Obstacles to Justice: The Interaction of Procedural and Substantive Law in the United States, France, and China*, 23 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 187 (2010).
This comment is a broad survey of comparative approaches to justice in the U.S., France, and China. Part of the survey includes alternative dispute resolution methods, primarily mediation. The author suggests mediation, which is commonly employed in China, can be a particularly effective tool to bridge cultural and jurisprudential divides. However, the different approaches to mediation need to be appreciated to be effective.
{44}ARBITRATION—GENERAL
{92}SUBJ MATTER: INT'L
{124}COMPARISONS: CROSS-CULTURAL
{125}COMPARISONS: HISTORICAL

James M. Van Nostrand & Erin P. Honaker, *Preserving the Public Interest Through the Use of Alternative Dispute Resolution in Utility Retail Rate Cases*, 27 PACE ENVTL. L. REV. 227 (2009).
This article explores the measures that public utilities commissions (PUCs) can take to encourage settlement of utility rate proceedings. The authors explore formal and informal ways that regulatory agencies can take to encourage settlement in such cases. In addition, the article discusses both practical and fairness considerations of the settlement process. Finally, the article explains how the settlement process in the utility rate proceeding context might be applied to other types of disputes.
{1} NEGOTIATION—GENERAL
{103} SUBJ MATTER: PUBLIC UTILITIES

Urska Velikonja, *Negotiating Executive Compensation in Lieu of Regulation*, 25 OHIO ST. J. ON DISP. RESOL. 621 (2010).
This article analyzes the process for setting executive pay and explains how the existing process is ineffective. The article provides a history of executive compensation and describes how the process for setting executive pay consistently leads to overpayment. In addition, the article proposes steps that a company interested in rethinking its process for negotiating executives' salaries should take to reduce the overall costs of disputes over executive compensation by increasing participation.
{1} NEGOTIATION—GENERAL
{81} SUBJ MATTER—CORPORATE

Liza Vertinsky, *Comparing Alternative Institutional Paths to Patent Reform*, 61 ALA. L. REV. 501 (2010).
This article reexamines the costs associated with alternative avenues to achieve legal reform. The focus is on patent law because it involves such complex and related bodies of all sorts of law. The sources of cost that are focused on are variance, specificity, speed, and participation. The efficient and use of negotiation can help when it comes to speed and participation, especially when it comes to international negotiations.
{1} NEGOTIATION—GENERAL
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Ignacio A. Vincentelli, *The Uncertain Future of ICSID in Latin America*, 16 LAW & BUS. REV. AM. 409 (2010).
This article researches the historical interaction of the International Centre for Settlement of Investment Disputes (ICSID) and Latin America to suggest the recent ICSID-unfriendly measures taken by some Latin American countries might not be a regional aberration. If the rest of Latin America follows the example of Bolivia and Ecuador and denounces the Washington Convention, the future of ICSID in Latin America becomes uncertain.
{60} ADR—GENERAL
{75} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L

Jorge E. Vinuales, *Legal Techniques for Dealing with Scientific Uncertainty in Environmental Law*, 43 VAND. J. TRANSNAT'L L. 437 (2010).
The author analyzes how the international environmental law handles scientific uncertainty. The author identifies ten legal techniques in handling scientific uncertainty and discusses arbitration in two legal techniques, "Provisional Measures" and "Evidence." The ten legal techniques are linked

to four different stages of development of environmental regimes—advocacy, design, implementation, and reparation. The techniques are illustrated by using environmental treaties and case studies focusing on the climate change regime.
{44} GENERAL—ARBITRATION
{84} SUBJECT MATTER: ENVIRONMENT

Justin Wagner, *Assisting Distressed Homeowners to Avoid Foreclosure: An Advocate's Role in an Evolving Judicial and Policy Environment*, 17 GEO. J. ON POVERTY LAW & POL'Y 423 (2010).
The article discusses the growing importance of advocacy for homeowners in danger of losing their home to foreclosure. Foreclosure settlement conferences have become more common as foreclosure continues to spike and can help the lender and homeowner come to a mutually beneficial agreement. The author argues legal representation for homeowners is crucial to optimize communication between parties and protect homeowners from foreclosure scams.
{60} ADR—GENERAL
{73} SUBJ MATTER: GENERAL
{147} POWER IMBALANCE

Ellen Waldman, *Elegy for Mrs. G: Mediating Losses at the End of Life*, 23 QUINN. PROB. LAW JOUR. 411 (2010).
This article advocates the use of mediation to resolve end-of-life issues before they arise into acute conflicts. The author believes mediation services on issues such as feeding tubes should be offered in nursing homes, assisted living facilities, and long-term care facilities. However, the article furthers that when mediation is used after a conflict has arisen, its power to resolve conflicts should not be overstated.
{21} MEDIATION—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Taylor Wallace, *Trademarks in International and Comparative Law: Most Favored Nation Treatment and WTO Dispute Resolution*, 19 J. CONTEMP. LEGAL ISSUES 462 (2010).
This article discusses the dispute-resolution facilities of the World Trade Organization (WTO) that were established in the TRIPs Agreement of 1994. As part of the agreement, the WTO arbitration panel determines whether a member nation is abiding by the most-favored-nation principle with regard to the nation's trademark laws.
{44} ARBITRATION—GENERAL

{87} SUBJ MATTER: GOV'T
{92} SUBJ MATTER: INT'L
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Thomas W. Walsh, ReliaStar Life Insurance Co. of New York v. EMC National Life Co., 104 AM. J. INT'L. L. 94 (2010).
The author analyzes *ReliaStar Life Insurance Co. of New York v. EMC National Life Co.*, in which the U.S. Court of Appeals for the Second Circuit held an arbitrator may sanction a party by ordering them to pay attorney or arbitrator fees when their arbitration clause is broad—even in situations in which the agreement includes a provision that each side cover its own arbitrator and attorney fees.
{44} ARBITRATION—GENERAL
{75} SUBJ MATTER: COMMERCIAL

Mark D. Wasco, Note, *When Less Is More: The International Split Over Expanded Judicial Review in Arbitration*, 62 RUTGERS L. REV. 599 (2010).
This note address the international split on whether parties are free to contract to expand judicial review of arbitration awards. The author contributes the split to two competing ideologies underlying arbitration: 1) the importance of party autonomy, and 2) finality. The note argues against finding fault with governing doctrines such as The New York Convention and also warns against expanded judicial review of arbitration awards.
{44} ARBITRATION—GENERAL
{73} SUBJ MATTER: GENERAL
{122} SETTLEMENT: ENFORCEMENT

Mark C. Weber, *Settling Individuals with Disabilities Education Act Cases: Making Up is Hard to Do*, 43 LOY. L.A. L. REV. 641 (2010).
The article is intended to serve as a "comprehensive description" of the current law of settlement for Individuals with Disabilities Education Act (IDEA) cases. The author takes an in-depth look at the dispute resolution processes for these cases, making note of what can be mediated and what the rules are for such mediations. The article also makes suggestions as to possible changes to the IDEA case settlement system.
{21} MEDIATION—GENERAL
{83} SUBJ MATTER: EDUCATION

W. Mark C. Weidemaier, *Toward a Theory of Precedent in Arbitration*, 51 WM. & MARY. L. REV. 1895 (2010).
Arbitration has traditionally been thought of as operating on a case-by-case basis. However, the author challenges that concept by arguing for a system of arbitral precedent. The article first illustrates several systems that utilize arbitration awards as precedent. Second, the article examines the conditions that need to be in an arbitration system for arbitral precedent to evolve.
{44} ARBITRATION—GENERAL
{73} SUBJ MATTER: GENERAL

Nicholas R. WeisKopf & Matthew S. Mulqueen, *Hall Street, Judicial Review of Arbitral Awards, and Federal Preemption*, 29 REV. LITIG. 369 (2010).
This article discusses the residual uncertainty leftover from the Supreme Court's decision in *Hall Street* regarding whether or not "manifest disregard" remains a viable basis for refusing to confirm an arbitration award. The article also highlights the ongoing debate and court decisions of whether parties should be able contract to allow courts a higher standard of review the provided for in the FAA.
{44} ARBITRATION—GENERAL
{73} SUBJ MATTER: GENERAL
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Nancy A. Welsh, *Funding Justice: What is "(Im)partial Enough" in a World of Embedded Neutrals?*, 52 ARIZ. L. REV. 395 (2010).
The author discusses whether the Supreme Court's analysis in *Caperton v. A.T. Massey Coal Co.* could be applied as a test to determine whether private dispute resolution providers are, in fact, impartial when one of the parties to the dispute is a repeat player. The author expresses her concern that alternative dispute resolution, now a lucrative business, may be susceptible to corruption and proposes the private ADR community embrace regulation designed to preserve its integrity.
{60} ADR—GENERAL
{102} SUBJ MATTER: PUBLIC POLICY

Anna Wermuth & Jeremy Glenn, *It's No Revolution: Long Standing Legal Principles Mandate the Preemption of State Laws in Conflict with Section 3(O) of the Fair Labor Standards Act,* 40 U. MEM. L. REV. 839 (2010).
The authors discuss how collective bargaining in the private sector is governed exclusively by federal law and states should not be permitted to regulate collective bargaining between labor organizations and private

employers. The authors discuss the National Labor Relations Act, which is federal law that regulates collective bargaining in the private sector. They argue state legislatures should not be allowed to invade this process.
{1} NEGOTIATION—GENERAL
{93} SUBJ MATTER LABOR—GENERAL
{128} REQUIREMENTS: STATUTORY OR RULES

Maureen A. Weston, *The Other Avenues of* Hall Street *and Prospects for Judicial Review of Arbitral Awards*, 14 LEWIS & CLARK L. REV. 929 (2010).
The author examines the ultimate effect of the *Hall Street* decision. The article explores ways that parties can get around *Hall Street* by using "creative drafting." Weston also contends the decision raises "more questions than it answered." She also discussed the importance of party autonomy post-*Hall Street*, a holding that seems to restrict the parties' ability to create their own arbitration style. She also looks into the possibility that state arbitration law might become more prevalent as a result of the *Hall Street* decision.
{44} ARBITRATION—GENERAL
{73} SUBJ MATTER: GENERAL

Winfield J. Wilson, *Legal Foundations for NGO Participation in Climate Treaty Negotiations,* 10 SUSTAINABLE DEV. L. & POL'Y 54 (2010).
This note argues the provisions of the Aarhus Convention allowing for non-governmental organization (NGO) participation in climate change negotiations are not stringent enough. Although NGOs can take grievances against lockouts through mediation or arbitration, the author argues formal rules should be put in place guaranteeing NGO presence at international climate change negotiations.
{1} NEGOTIATION—GENERAL
{83} SUBJ MATTER: ENVIRONMENT
{92} SUBJ MATTER: INT'L

Roselle L. Wissler, *Representation in Mediation: What We Know from Empirical Research*, 37 FORDHAM URB. L.J. 419 (2010).
This article criticizes current studies on mediation and states that, in reality, problems unrepresented parties face in mediation might not be as great as some claim. Most unrepresented parties do not see the mediation process as less fair, or the mediator as less impartial, than do represented parties. Additional research is needed to examine how to structure participation of lawyers in mediation to ensure parties feel able to express their views.
{21} MEDIATION—GENERAL
{73} SUBJ MATTER: GENERAL

Joshua S. Wolkoff, Note, *Transcending Cultural Nationalist and Internationalist Tendencies: The Case For Mutually Beneficial Repatriation Agreements*, 11 CARDOZO J. CONFLICT RESOL. 709 (2010).
This note criticizes Italy's recent repatriation of artwork and gives light to the controversial tactics the Italian government is using to reclaim valuable antiquities. The author recommends the use of mutually beneficial repatriation agreements which he argues will allow Italy to reach its goals through a much more collaborative approach than its current campaign. He argues Mutually Beneficial Repatriation Agreements can positively affect all Italian property disputes if used properly.
{60} ADR—GENERAL
{73} SUBJ MATTER: GENERAL
{136} ECONOMIC ADVANTAGES OF ADR

Stephen G. Wood et al., *The American Experience with Age Discrimination Through the Lens of Nine Supreme Court Cases (2004-2009)*, 58 AM. J. COMP. L. 377 (2010).
This article discusses the development of the legal landscape of age discrimination law under the Age Discrimination in Employment Act (ADEA). The authors have chosen to use nine Supreme Court cases decided in the current decade. The article also highlights three cases that involve pension eligibility, reverse discrimination, and the use of alternative dispute resolution to resolve age discrimination disputes.
{44} ARBITRATION—GENERAL
{94} SUBJ MATTER: LABOR—DISCRIMINATION

Robert E. Lee Wright, *Alternative Dispute Resolution: Mediator Listening Skills for All Attorneys,* 89 MICH. BAR J. 32 (2010).
The author provides easy tips to improve communication skills and discusses listening skills used by mediators. The author argues by using mediator listening skills, all lawyers can develop a greater understanding of their clients and witnesses. Some of the tips include: listening to the whole person, listening without judging, listening reflectively, asking open-ended questions, and silence. The author states by practicing basic listening skills, anyone can improve their ability to communicate.
{21} MEDIATION—GENERAL
{73} SUBJ MATTER: GENERAL

Dolly Wu, *Patent Litigation: What About Qualification Standards for Court Appointed Experts?*, 2010 B.C. INTELL. PROP. & TECH. F. 91501 (2010).

This article argues there should be equivalent requirements for court-appointed and party-employed patent experts. One of the reasons judges rarely appoint experts is because some judges choose to appoint mediators and rely on alternative dispute resolution. The ADR process acts as a substitute for the patent experts and often results in successful settlement. Judges sometimes mediate the ADR sessions, leading to a disinclination of appointed court experts.
{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Yungsuk Karen Yoo, Note, *Tainted Milk: What Kind of Justice for Victims' Families in China?*, 33 HASTINGS INT'L & COMP. L. REV. 555 (2010).
This note asserts China's tainted milk scandal marked a shift in dispute resolution from settlement and mediation toward civil litigation. It claims litigation as an outlet in which product-liability plaintiffs may assert their autonomy and receive greater compensation. It also claims threat of litigation will prompt manufacturers and sellers toward more effective self-regulation.
{60} ADR—GENERAL
{104} SUBJ MATTER: REGULATORY
{110} SUBJ MATTER: TORTS—OTHER

Ruth Zafran, *Children's Rights as Relational Rights: The Case of Relocation*, 18 AM. U. J. GENDER SOC. POL'Y & L. 163 (2010).
The author proposes viewing petitions for relocation in divorce cases from a relational rights perspective, according children and their welfare more clout in determining where they will live in either alternative dispute resolution or adjudicatory proceedings. The article focuses on petitions to relocate internationally, and suggests the child's right to maintain their cultural identity be a key factor in the parties' decisionmaking.
{21} MEDIATION—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Steve Zikman, *South Pasadena: A Dialogue on Dialogue*, 10 PEPP. DISP. RESOL. L.J. 355 (2010).
In this article, the author examines the challenges participants face when attempting a dialogue to resolve a community land issue. The article emphasizes the benefits of using a mediator prior to negotiations. The mediator works with the parties in small groups to prepare them for their future negotiations. The article claims that by using a mediator prior to actual negotiations, parties avoid the strife and negative community consequences that will likely occur if that parties fail to settle.

{21} MEDIATION—GENERAL
{77} SUBJ MATTER: COMMUNITY

Genan Zilkha, Note, *The RIAA's Troubling Solution to File-Sharing*, 20 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 667 (2010).
The Recording Industry Association of America (RIAA) has tried to stop illegal peer-to-peer (P2P) file-sharing but hasn't had success with litigation and has discussed using mandatory arbitration. The author states arbitration might not be trustworthy because of arbitrator bias. Arbitration organizations are businesses and the RIAA could choose an arbitration provider who values its repeat business and would generally rule in its favor. The author suggests the RIAA create covenants not to sue instead.
{44} ARBITRATION—GENERAL
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Nourit Zimerman & Tom R. Tyler, *Between Access to Counsel and Access to Justice: A Psychological Perspective*, 37 FORDHAM URB. L.J. 473 (2010).
This article asserts litigants have different experiences and evaluations of the legal system depending on whether they have counsel or are pro se. Further, litigants sometimes prefer certain types of ADR processes with or without counsel. Also, although mediation and other ADR mechanisms are popular among participants, they are not necessarily always evaluated as being more fair or providing greater participation opportunities than trials.
{60} ADR—GENERAL
{73} SUBJ MATTER: GENERAL
{151} ROLE OF LAWYERS

Adam S. Zimmerman, *Funding Irrationality*, 59 DUKE L.J. 1105 (2010).
This article examines the decisionmaking processes of individuals when confronted with economic choices, specifically within the context of class action lawsuits. The article recognizes that individuals often make irrational choices, such as buying things they do not want or saving too little for retirement. Because of this frequent irrationality in individual decisionmaking, the author argues judges, arbiters, and mediators should refine the ways in which agreements are crafted. An adjustment could offset irrationality of the individuals who benefit financially from the settlement.
{73} SUBJ MATTER: GENERAL
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Ellen Zucker, *Agreements to Arbitrate Employment Discrimination Claims: Something New or a Reminder?,* 54 B. B.J. 13 (2010).

Zucker examines the interplay of the American Recovery and Reinvestment Act and the Defense Appropriations Act, which she states limits the use and enforceability of agreements to arbitrate. Zucker examines a Massachusetts Supreme Court case in light of what she sees as a Congressional wariness to arbitration. The implications of the Massachusetts case are that when employers wish to submit claims of discrimination to arbitration, it must now be done clearly and unambiguously.
{44} ARBITRATION—GENERAL
{94} SUBJ MATTER: LABOR—DISCRIMINATION